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Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-second session
Agenda item 4 (c)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

THE QUESTION OF TRANSNATIONAL CORPORATIONS

Report of the sessional working group on the working methods and activities of transnational corporations on its second session

Chairman-Rapporteur: Mr. El-Hadji Guissé

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GE.00-15249 (E)

Introduction

1. In accordance with its resolution 1998/8, the Sub-Commission on the Promotion and Protection of Human Rights established in 1999, for a period of three years, a sessional working group to examine the working methods and activities of transnational corporations.

2. The following experts were appointed as members of the working group: Mr. El-Hadji Guissé (Africa), Mr. Soo-Gil Park (Asia), Mr. David Weissbrodt (Western Europe and other States), Mr. Manuel Rodriguez-Cuadros (Latin America), and Mr. Vladimir Kartashkin (Eastern Europe).

3. The working group held three public meetings during its second session, on 1, 4 and 8 August 2000.

4. A representative of the Office of the High Commissioner for Human Rights opened the second session of the working group.

5. The Working Group elected Mr. El-Hadji Guissé as Chairman-Rapporteur.

6. The following members of the Sub-Commission who were not members of the working group also took part in the discussions: Mr. Asbjørn Eide, Ms. Françoise Jane Hampson, Mr. Godfrey Bayour Preware, Mr. Louis Joinet, Mr. Joseph Oloka-Onyango, Mr. Fried van Hoof, Ms. Deepika Udagama, Ms. Halima Embarek Warzazi, Mr. Yozo Yokota, Ms. Leila Zerrougui

7. The following specialized agency was represented at the session of the working group: International Labour Organization.

8. Representatives of the following non-governmental organizations in consultative status with the Economic and Social Council also participated in the meetings of the working group: American Association of Jurists, Centre Europe-Tiers Monde, Human Rights Advocates, Human Rights Watch, Indian Movement Tupaj Amaru, International Confederation of Free Trade Unions, Minnesota Advocates for Human Rights, Pax Romana.

9. The working group adopted the following agenda in 1999 for the duration of its mandate:

1. Election of officers.

2. Adoption of the agenda.

3. Activities of transnational corporations:

(a) Identification and examination of the effects of the activities of transnational corporations on the enjoyment of civil, cultural, economic, political and social rights, including the right to development, the right to a healthy environment and the right to peace;

(b) Gathering and examination of information, including any working paper, related to the effects of the activities of transnational corporations on the enjoyment of civil, cultural, economic, political and social rights, including the right to development, the right to a healthy environment and the right to peace;

(c) Preparation of a list, to be updated annually, of transnational corporations providing examples of their activities and indicating their positive and/or negative impacts on civil, cultural, economic, political and social rights, including the right to development, the right to a healthy environment and the right to peace, in countries in which they operate.

4. Present standards and standard-setting activities:

(a) Assessment of how the existing human rights standards apply to the activities of transnational corporations;

(b) Collection and analysis of the existing standards and standard-setting activities pertaining to the human rights aspects of the activities of transnational corporations, including those in other international bodies, NGO-based initiatives, business-related initiatives and private individuals' initiatives such as the MacBride Principles and the Sullivan Principles;

(c) Collection of the various international, regional and bilateral investment agreements in order to analyse their compatibility with human rights.

5. Conclusions and recommendations:

(a) Adoption of recommendations and proposals relating to the possibility of developing a code of conduct for transnational corporations, in order to ensure that their activities are in keeping with the promotion and protection of civil, cultural, economic, political and social rights;

(b) Defining the role of the United Nations, including appropriate implementation mechanisms, to ensure the compatibility of the activities of transnational corporations with human rights, including the right to development, the right to a healthy environment and the right to peace;

(c) Recommending the drafting and adoption of mechanisms in accordance with which host and home Governments would be obliged to elaborate internal legal monitoring standards in respect of the activities of transnational corporations;

(d) Analysis of the possible liability of States and transnational corporations that fail to fulfil their obligations.

6. Recommendations for the future work of the working group on the effects of the activities of transnational corporations on human rights, including the right to development and the right to a healthy environment.

7. Adoption of the report of the working group to the Sub-Commission.

10. The working group had before it for discussion three working papers drafted by Mr. Weissbrodt: "Principles relating to human rights conduct of companies" (E/CN.4/Sub.2/2000/WG.2/WP.1) and its two addenda containing background information and a list of existing sources of international standards drawn on in the preparation of the draft principles (E/CN.4/Sub.2/2000/WG.2/WP.1/Add.1 and Add.2). A written summary of an oral presentation by Mr. Guissé on the impact of the activities of transnational corporations (TNCs) on the enjoyment of all human rights was also made available to the working group. The working group also had before it the report on its first session (E/CN.4/Sub.2/1999/9).

I. IMPACT OF TRANSNATIONAL CORPORATIONS ON THE ENJOYMENT OF CIVIL, CULTURAL, ECONOMIC, POLITICAL AND SOCIAL RIGHTS

11. The Chairman-Rapporteur made an oral presentation on the impact of the activities of transnational corporations on the enjoyment of economic, social and cultural rights. He said that the working methods and activities of TNCs affected the enjoyment of human rights, including the right of people to self-determination. Self-determination involved the possibility of exercising sovereignty over natural resources and wealth, the right to development, the rights to health and welfare, and adequate living conditions. TNCs also had an impact on the physical and mental health of people, on employment and on working conditions, as well as on the right of association, the right to strike and the right to collective bargaining. They also had a significant bearing on scientific progress and its applications, and influenced the national and international social order.

12. The right to development was a comprehensive economic, social, cultural and political process, aimed at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. It was a reaffirmation of the interdependence and indivisibility of all human rights - civil, cultural, economic, political and social rights.

13. In an examination of the impact of the activities of TNCs, consideration should be given to what the possible consequences of those activities were on a community's economic rights and right to development, as well as on the right to a healthy environment. In the pursuit of economic activities, TNCs were not prepared to realize the right to solidarity, i.e., the right to development and the right to a healthy environment. The right to development implied the right of people to exercise sovereignty over natural resources. In that regard, TNCs should collaborate for the achievement of the right to development. Unfortunately, the trend was in the other direction: widespread and serious violation of the right to sovereignty over natural resources. At the same time, the integrated international production systems and the mobility of TNCs had increased their power of negotiation and reduced the decision-making power of States, particularly that of developing countries. In addition, TNCs were contributing to the undermining of economic and social equality. Negative behaviour on the part of TNCs was also

considered to be a factor impeding economic and social development in countries of the South. Slow technology transfer, lack of confidence and a negative level of investment in developing countries revealed that TNCs were holding back economic and social development. The right to development could only be conceived and achieved in a just international economic and social order. The current international order was dominated by TNCs.

14. The modalities and working methods of TNCs also had a profound impact on the right to a healthy environment. The problems of pollution of the seas, depletion of the ozone layer, global warming and a rise in sea level were a clear indication of various human rights violations particularly resulting from toxic wastes. TNCs were the major source of those toxic wastes. Further, TNCs were transferring those toxic wastes to regions such as Latin America and Africa where the environmental regulations were less stringent.

15. In addition to the impact of TNC activities on the community's rights, a close examination should also be made of their potential impact on individual rights, such as the rights to work, health and food. TNCs were expected to play a pivotal role in the development and protection of those rights. However, impact assessment of the activities of TNCs in that regard pointed in the other direction. According to International Labour Organization (ILO) estimates, some 1 billion workers were unemployed. The United Nations Conference on Trade and Development (UNCTAD) and ILO had also calculated that 3 per cent of total labour was employed by TNCs. Not enough jobs were being created by the TNCs. On the contrary, there had been massive lay-offs by TNCs in recent years. TNCs were systematically violating workers' rights by making abusive dismissals. Major problems such as those relating to technology transfer and capital flight revolved around the activities of TNCs in developing countries. It was therefore imperative to impose national and international regulations that were equally binding on all parties concerned. Another aspect of the problem lay with the international pharmaceutical companies, which were holding back much-needed drugs for some diseases including HIV/AIDS in developing countries. This was an obstacle to the enjoyment of the right to health and also posed a threat to the enjoyment of many other human rights. Furthermore, vulnerable groups such as women and children were profoundly affected by the activities of TNCs.

16. Another issue was that of the erosion of the cultural heritage of the third world in the globalization process, while Western culture extended its influence. Additionally, premature privatization was causing problems in the water and electricity sectors.

General comments by members of the working group and experts of the Sub-Commission

17. Members of the working group and other experts of the Sub-Commission made the following general comments.

18. The working group needed to examine not only the negative consequences of TNC activities but also their positive effects on the enjoyment of human rights. It was a paradox that there was an eager willingness on the part of developing countries to attract foreign direct investment whereas those countries were the most negatively affected by TNC activities. The task of the working group was to consider how the negative consequences of TNC activities

could be reduced and the positive effects enhanced. It was therefore important to focus not only on the negative effects, but also to formulate a constructive engagement with companies in the promotion and protection of human rights.

19. The negative impact of TNC activities, such as the undermining of Governments' genuine efforts to improve democratic and social development for their own interests, should be scrutinized. It should also be ensured that companies were not complicit in human rights abuses by increasing the resources available to repressive and undemocratic Governments.

20. With regard to the consequences of TNC activities, a consistent approach was required. A summary of existing research was needed to develop that approach. The working group should collect examples of best practices in regard to safeguarding human rights, and of the companies that used them.

21. In order to reduce the negative consequences, it was necessary to improve the capacity of States to apply human rights standards to TNC activities. In that regard, the consolidation of democracy or democratic stability had a huge potential to influence both the promotion and the violation of human rights.

22. Attention needed to be paid to companies that produced arms, which were a vicious cause of many human rights violations, including violations of the rights to life, property and freedom of movement. The production and transfer of arms should be regulated.

23. There was a need to address the consequences of TNC activities in the context of the right to peace, the right to development and the right to a healthy environment. In that regard, the work of the United Nations system, including that of the former United Nations Centre on Transnational Corporations should be also reflected in the work of the working group.

24. The role of States was affected by globalization. Many countries had no capacity or inadequate capacity to regulate the activities of TNCs, which gained comparative advantage in the globalization process. In particular, the impact of information technology on States' capacity to manage TNCs in a globalizing world should be closely examined.

Comments by NGOs

25. The working group should focus on the effects of the working methods and activities of TNCs on the enjoyment of all human rights, as a matter of the first priority. In particular, the working group should consider the impact of the activities of TNCs on indigenous peoples, including activities that could lead to the erosion of their cultural heritage.

II. DRAFT PRINCIPLES RELATING TO HUMAN RIGHTS CONDUCT OF COMPANIES

26. The fundamental rationale for the draft principles was that business enterprises had increased their power and with power should come responsibility. Hence, there was a need to consider what human rights duties should be expected of companies.

27. Although the initial mandate of the working group was to draft human rights standards for TNCs, some participants questioned why those standards should be applied only to TNCs and not to all companies, regardless of their corporate form and regardless of the international or domestic nature of their business. However, some members of the Sub-Commission preferred to focus only on TNCs. There was a considerable divergence of views on the issue.

28. A second issue was how to identify those human rights standards and the nature of the standards: principles, guidelines, rules or a code of conduct for companies. The most effective implementation would be for companies to take on the standards as a matter of their own business practices. In that regard, the title "human rights principles for companies" was used, although it might be less appropriate for a legally binding instrument.

29. A connected issue was whether the Sub-Commission should draft legally binding standards. There existed a number of non-binding standard-setting instruments. Particular reference was made to the considerable experience in that field of ILO, which had developed non-binding guidelines for multinational enterprises. It was necessary to have the input and involvement of companies, unions, NGOs and other interested parties in considering the appropriate legal nature of the document that the working group was drafting.

30. Another important issue was that of the obligation of Governments in relation to the activities of companies. The approach taken in the working paper could be summarized as follows: "While Governments have the principal responsibility to respect, ensure respect for, and promote internationally recognized human rights, companies shall also respect, ensure respect for, and promote international human rights within their respective spheres of activity and influence."

31. With regard to the scope of responsibility of companies, the draft principles covered a wide range of topics, encompassing war crimes, crimes against humanity and other crimes. They also featured the obligation of companies to avoid discrimination, harassment and abuse. The draft principles covered slavery, forced labour, and child labour. They further addressed how the duties of companies related to national sovereignty and the right of self-determination. Other topics covered were a healthy and safe work environment, fair and equal remuneration for employees, hours of work, freedom of association and the right to collective bargaining. The draft principles also covered consumer as well as environmental protection and human rights.

32. The author of the draft principles had not been asked to incorporate implementation measures in them. Nonetheless, they necessarily included some minimal implementation procedures, such as wide dissemination of the draft principles, training and encouragement of companies to adopt the standards as the basis for their own. However, it would be beneficial for the working group to consider additional approaches for effective implementation.

General comments by members of the working group and other experts of the Sub-Commission

33. Three essential aims of the draft principles were: (i) to help Governments identify what types of legislation they should enact and what types of enforcement mechanisms they should

implement to ensure the principles had a positive influence; (ii) to encourage companies to implement the draft principles; (iii) and to lay the groundwork for the binding international standard setting process.

34. With regard to the applicability of the draft principles, there were opposing views among the members or the experts. One view was that all companies should be bound by the principles; the other was that the principles should only apply to TNCs.

35. Those who held the former view argued that there were many types of companies and that it was extremely difficult to distinguish TNCs from national companies in most cases. Similarly, national companies had an equally important impact on the enjoyment of human rights. Further, in many countries, the major sources of human rights problems lay with subcontractors. Finally, TNCs were sufficiently adept at camouflaging their legal entity so as to appear as national companies and thus avoid being subject to international standards. TNCs had financial and other structures whereby they could hide their nature as TNCs, in order to avoid any claims, which might subject them to civil, administrative or criminal jurisdiction. Hence, companies' activities, irrespective of their legal and financial status, should be bound by the draft principles.

36. Those who held the other view argued that the mandate of the working group was confined to the activities of TNCs. They maintained that the impact that TNCs had on peoples' lives was different from that of domestic companies: locally based companies were more amenable to the domestic legal system, including labour and environmental law. Also they had a greater connection with the local community and a greater commitment to the wellbeing of the local community. Violations of labour rights such as the freedom of association and security of employment were more rampant in export processing zones (EPZs) where TNCs enjoyed a general advantage over others by benefiting from the looser regulation in EPZs. An examination of the qualitative nature of the activities of the different types of legal entities was therefore needed. The working group should conduct human rights impact studies on the activities of TNCs as compared to domestic companies.

37. With regard to the nature of the draft principles, a number of members of the working group strongly urged that they should be the basis for a legally binding code of conduct for the regulation of the activities of companies.

38. Another view put forward was that the preparation of a draft declaration could be considered. Thereafter, a legally binding treaty could be drafted, based on that draft declaration. The benefit of having voluntary principles at the current stage of the debate was recognized.

39. The role of national courts should be identified, given that existing international human rights standards might have already been incorporated in domestic law. It was therefore necessary to look at the jurisprudence of domestic courts in implementing those international human rights norms and standards.

40. With regard to States' obligations to protect human rights affected by companies' activities, the importance of preventive measures, sanctions for human rights violations and remedies for the victims of those violations was emphasized.

41. It was further stressed that the legal responsibility of home and host States should be adequately addressed. States might lack a legal, regulatory, investigatory infrastructure to take effective action. It was suggested that the international community should develop a system to assist development of such an infrastructure.

42. With regard to the monitoring of particular violations of human rights by companies, the assistance of NGOs in indicating the precise causes of problems in countries should be widely sought.

43. Avenues for the implementation of the draft principles at the national and international levels with regard to the activities of TNCs should be studied. Prevention and promotion should be also considered.

44. The draft principles should touch upon all possible problems relating to TNC activities. A list of violations by TNCs should be drawn up and further development of a legally binding instrument should be based on a study of the effects of TNC activities.

General comments by specialized agencies

45. The representative of ILO made a statement on ILO activities concerning the effects of the activities of multinational enterprises (MNEs) on the enjoyment of human rights, particularly relating to labour standards.

46. ILO had prepared country studies on the impact of globalization which examined the social impact of globalization in a number of countries at different levels of development and in various situations.

47. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy addressed the universal commitments of four entities: MNEs, workers' organizations, employer's organizations and Governments. It had two aims: to encourage the positive contributions MNEs could make to economic and social progress and to minimize and resolve the difficulties to which their operations, by their very nature, could give rise. The ILO Declaration provided that all four actors should respect the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. A wide range of topics were addressed in the ILO Declaration, such as employment promotion and security, equality of opportunity and treatment, occupational health and safety, freedom of association and collective bargaining, and wages, benefits and conditions of work.

48. With regard to the effects of the activities of MNEs on the enjoyment of human rights, a periodic survey was made by ILO to examine both negative and positive effects of MNE activities based on information received from Governments, workers and employers. The seventh survey was being undertaken. It focused inter alia on linkages between MNEs and national enterprises, and the impact of MNE activities on lower income groups and developing areas and on the enjoyment of workers' rights in export processing and free trade zones. ILO had also endorsed a programme of promotional activities to accompany the initiatives of MNEs

and small and medium enterprises (SMEs) in areas of convergence between internationally recognized human rights and labour standards, and the aims of socially responsible policy and programmes of enterprises.

49. With regard to implementation, ILO involved the private sector in a number of activities in consultation with workers, employers and Governments. Those activities included access to the ILO global knowledge based on standards, practices and national laws and regulations relating to labour and employment; training in more effective implementation of social policy and programmes of enterprises; and industrial cooperation on [illegible] ground, particularly in the area of the elimination of child labour. ILO also participated in the United Nations Secretary-General's Global Compact in the areas of freedom of association and collective bargaining, and abolition of child and forced labour and employment discrimination.

Comments by NGOs

50. The working group should focus on the effects of the activities of TNCs on the enjoyment of all human rights in line with the mandate given to the working group. It was therefore argued that the development of a code of conduct was premature at the current stage.

51. Diverging views were expressed by NGOs with regard to the applicability of the draft principles to companies. Some argued that the working group should focus on the activities of TNCs, given the enormous impact that those entities had on the enjoyment of human rights. On the other hand, there was a request to expand the applicability of the draft principles to all companies, not only TNCs.

52. A large majority of NGOs stressed the urgent need for a legally binding instrument to regulate the activities of TNCs. A voluntary code of conduct was not sufficient. In that connection, the working group should recommend to the Sub-Commission that a drafting committee be established to draft a treaty on the conduct of transnational companies. That would be a significant first step towards developing a legally binding document.

53. Such a legally binding instrument would provide a better means of ensuring compliance with the rules. It could also streamline the existing rules relating to the regulation of companies.

54. With regard to the nature of the draft principles, the advantages of a voluntary code of conduct at the current stage of the debate in the working group were pointed out. On the one hand, a hasty and over-ambitious drafting of a legally binding treaty would jeopardize the overall goal of the working group's work. On the other hand, it was stressed that the working group should adopt the draft principles next year.

55. It was also stressed that both home and host States had an obligation to regulate the conduct of third parties, including companies, with a view to protecting the human rights of individuals within their jurisdictions.

56. It was proposed that in addition to being potentially subject to jurisdiction in other locations, corporations should always be subject to jurisdiction in their country of incorporation for any alleged violations of human rights or of international environmental law, regardless of

where the violations occurred. In addition, it was proposed that the Sub-Commission should encourage the Hague Conference on Private International Law to take a more broad based approach regarding jurisdiction over human rights offenders. The preliminary draft convention on jurisdiction and foreign judgments in civil and commercial matters, which had been drawn up in October 1999 and would be discussed in June 2001, contained some language on human rights in article 18. However, that language only made reference to the most egregious violations of human rights, such as war crimes and grave violations of fundamental rights. Corporations should be held accountable for other human rights violations which did not necessarily fit within those categories, such as violation of the right to a healthy environment.

57. It was also proposed that the role that different human rights mechanisms, such as the Committee on Economic, Social and Cultural Rights or mechanisms to implement conventions concerning the environment, could play should be analysed.

58. The following specific comments were made relating to the draft principles:

Consideration should be given to including an express guarantee of the rights of indigenous people;

Article 3 should include as stakeholders the public and private lending institutions, which were a potentially positive influence;

Article 7 should include benefit from the illegal acts of others;

Section D of the draft principles relating to discrimination in employment should include a clause on access for the disabled which would require employers to provide reasonable accommodation to the disabled;

Article 10 of the draft principles might run the risk of privatizing justice by allowing companies to conduct investigations on matters that should be resolved by an independent judicial entity;

With regard to articles 12 and 13, specific reference should be made to all eight core ILO conventions;

Article 16 should include the responsibility of a company to seek awareness of and inform itself on the local human rights conditions so that it did not become complicit in human rights abuses;

Article 22 might further legitimize the private militia by allowing them to have private security guard arrangements;

In article 25, reduction of wages for disciplinary measures should not be permitted;

In article 27, the phrase "are prescribed by law" should be removed, considering that there were a number of regimes against freedom of association.

Regarding article 33 of the draft principles, concern was expressed about the non-committal language: "where possible" and "generally". It was suggested that the language should read: "Companies must undertake environmental and social assessments and prepare long-term capital investment reports on a periodic basis (preferably annually or biannually). Companies must distribute such reports in a timely manner and in a manner that is accessible to the target audience. Copies must be distributed to the United Nations Environment Programme, the International Labour Organization, any other interested international bodies, the national Government hosting the multinational company, the national Government where the multinational is incorporated and all other affected groups as determined by an independent consultant. The reports should be made available to the general public";

Article 37 should request that oral and written communications should be made. In the same article, "To the extent of their resources and capabilities" should be deleted;

Article 38 should be strengthened with regard to the business relationship with subcontractors and suppliers, because they caused labour problems in many cases;

Article 39 needed to have a stronger implementation mechanism.

III. RECOMMENDATIONS FOR FUTURE WORK OF THE WORKING GROUP

59. It was strongly recommended that more time be allocated for the meetings of the working group to permit an in-depth debate on the issues. The meetings could take place before, after or during the Sub-Commission, with the participation of other actors such as NGOs.

60. The working group should continue to consider the various diverging views with regard to the scope of the mandate. In that context, several additional working papers and actions, described in paragraph 61 below, were agreed upon.

61. The working group decided to invite Mr. El-Hadji Guissé to revise and update his working paper on the consequences of the working methods and activities of transnational corporations as well as the responsibility of States and TNCs with regard to the violation of all human rights. It welcomed the offer of Mr. Asbjørn Eide to prepare a working paper on procedures for the implementation of standards on the human rights conduct of companies and requested him to do so; and it invited Mr. David Weissbrodt to revise and update his draft standards on the human rights conduct of companies, in the light of the need for more detail on ways to implement them. Each of those experts was invited to consult with relevant special rapporteurs, working groups, treaty bodies, United Nations agencies and non-governmental organizations in preparing their working papers and also to take into account the comments made at the second session of the sessional working group. Furthermore, Governments, non-governmental organizations, and other interested parties, including the International Labour Organization, were invited to transmit their updated studies and information on the consequences of the working methods and activities of transnational corporations. Non-governmental organizations were further invited to submit comments to the three Sub-Commission experts who would be cooperating in preparing papers, without financial implication, including through

meetings and seminars before the next session of the Sub-Commission, and each expert was invited to submit his revised working paper to the sessional working group and the Sub-Commission at their next sessions.

62. The working group considered that it would be useful to prepare a glossary explaining the terminology regarding the criteria and activities of TNCs.

IV. ADOPTION OF THE REPORT OF THE WORKING GROUP TO THE SUB-COMMISSION

63. At its final meeting, the working group adopted the present report to the Sub-Commission on the Promotion and Protection of Human Rights.

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Fifty-second session
Item 4 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Globalization and its impact on the full enjoyment of human rights

Preliminary report submitted by J. Oloka-Onyango and Deepika Udagama,
in accordance with Sub-Commission resolution 1999/8

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Introduction and background

1. In decision 2000/2 of the Commission on Human Rights recalling Commission resolution 1999/59 and taking note of resolution 1999/8 of the Sub-Commission on the Promotion and Protection of Human Rights, decided to approve the nomination of Mr. J. Oloka-Onyango and Ms. Deepika Udagama as Special Rapporteurs to undertake a study on the issue of globalization and its impact on the full enjoyment of all human rights, paying specific attention to the recommendations made by the Sub-Commission and the Commission so as to refine the focus and methods of the study.[1]

2. The appointment of the two Special Rapporteurs follows their joint working paper entitled "Human rights as the primary objective of international trade, investment and finance policy and practice" (E/CN.4/Sub.2/1999/11) and the working paper by Mr. J. Oloka-Onyango entitled "Globalization in the context of increased incidents of racism, racial discrimination and xenophobia" (E/CN.4/Sub.2/1999/8). It also builds upon the Sub-Commission's general concern with pursuing the realization of economic, social and cultural rights, and specific recent attention to the global ramifications of various non-State actors and their influence over the realization of such rights. Attention to the questions of extreme poverty, structural adjustment, the right to education, income distribution and the right to food - to mention only a few areas of concern - have also been subjects of examination, both within the framework of the Commission and the studies of the Sub-Commission. Finally, the establishment of a Working Group on Transnational Corporations (TNCs) illustrates the Sub-Commission's growing concern with this question.[2]

3. This preliminary report develops the broad conceptual parameters of the subject of globalization, while at the same time narrowing its focus to some of the practical issues involved in a critical consideration of the phenomenon. Recognizing that the subject of globalization is one of tremendous breadth and scope, the Special Rapporteurs have chosen to focus on a number of discrete subjects. Those subjects are either of such prominence that they cannot be ignored in a study of this nature, or they present particularly important conceptual and practical dimensions that merit immediate attention. Consequently, the Special Rapporteurs have selected two dominant themes for this preliminary report which we believe extend to the core of the phenomenon of globalization and its impact on the full enjoyment of human rights. Our first concern is with the institutional framework that has been developed to pursue the essential goals of globalization. Here we are primarily concerned with the multilateral institutions (MLIs), which include the Bretton Woods agencies[3] and the World Trade Organization (WTO),[4] and of course with their relationships to individual States within the international community. Secondly, we examine the related questions of equality and non-discrimination, with a particular focus on the effects of globalization on the situation of women.

4. The phenomenon of globalization has attracted more significant global attention than perhaps any other issue in recent memory.[5] From the slogans of corporate moguls and trade ministers, to television documentaries, radio broadcasts[6] and talk shows, globalization has captured the imagination of people the world over.[7] That fascination with the topic has obviously not left out its connections to human rights. Indeed, a recent documentary by the

Public Broadcasting Service (PBS) in the United States was entitled "Globalization and Human Rights".[8] According to the blurb advertising its screening, the docudrama would take viewers on a journey that:

> "Starts at a summit for corporate decision-makers - the World Economic Forum in the Alps of Switzerland - and travels deep into the gold mines of South Africa, then visits the controversial Shell oilfields of Nigeria and Nike shoe factories in Asia while examining an emerging conflict in a new world order between those making macroeconomic decisions and those struggling to cope with the impact of those decisions. At the core of the programme is the ongoing debate over whether or not human rights concerns should be linked to those policies."[9]

From the preceding analysis it is clear that globalization is no passing or ephemeral cloud.[10] It is also clear that the phenomenon is capable of any number of conflicting and sometimes even contradictory interpretations, particularly of a qualitative or value-laden nature. This is reflected in the existence of some bewilderment and a growing alarm over globalization's ramifications. Most importantly, there is little doubt that globalization has numerous implications for the regime of international law and practice with which we are most concerned in this study - the regime of international human rights.

5. The recent protests at Seattle in December 1999, and in Washington D.C. in April this year, brought the phenomenon of globalization into graphic relief in a manner in which no previous discussion of the issue has done.[11] The protests also brought to the fore the multifaceted nature of the phenomenon of globalization and its potential impact on a whole range of contemporary social, political, cultural and economic relationships. If nothing else, the protests demonstrated that in the foreseeable future, globalization will remain an issue of considerable importance to both intellectual debate and discussion as well as to the overall conduct of international relations, sustainable human development, and the promotion and protection of international human rights. However, precisely because the phenomenon has evoked responses of such a diverse nature, the Sub-Commission needs to carefully carve out the specific and distinct dimensions of the issue that most appropriately engage its mandate, and which extend and illuminate, rather than minimize or obscure its essential features.

I. REVISITING THE CONTESTED MEANINGS OF GLOBALIZATION

6. Since coming to the fore as one of the most talked-about issues of the late twentieth century and the new millennium, the phenomenon of globalization has captured world attention in various ways. From the information superhighway to the international trade in drugs and arms, to the phenomenal impact of MacWorld, Nike and the global media, the subject of globalization has come to concern all and sundry. At the core of most discussions of the issue is the extraordinary explosion of both technology and information, in ways that have considerably reduced the twin concepts of time and space. In particular, information and communications technology (ICT) has emerged as perhaps the most dominant force in the global system of production, albeit with significant ramifications in all other spheres of contemporary human existence.[12]

7. While recognizing the contribution of ICT and the attendant forces of the global economy to the emergence of globalization as we know it, too much has been made of the phenomenon of globalization in its economic dimensions. In a sense there is a new orthodoxy or ethos about the economic dimensions of globalization that exalts it above all other human values or phenomena, indeed even above the basic condition of human beings themselves.[13] The unfortunate consequence of this has been to denigrate (or mask) the social, cultural and especially the political roots and ramifications of the phenomenon. As Brazilian President Enrique Cardoso argues, it is a serious mistake to think of globalization as the result of market forces alone. "The boundaries within which the market operates are defined *politically*, in direct negotiations between governments in multilateral forums, such as the World Trade Organization. *The power game is always present in such negotiations*."[14] Moreover, it is a power game the rules of which are dictated by very few actors. However, its impact affects the vast majority. Consequently, understanding the political and other dimensions of the phenomenon of globalization is essential to the development of a rational and considered response to it.[15]

8. Because of globalization's multifaceted nature, it is essential to grasp the different motivating forces that are impelling these developments aside from the purely economic, and also to recognize the different directions from which they are coming. As Paul Streeten has pointed out, there is a globalization that can come "from above" in the form of multinational firms, international capital flows and world markets.[16] Intrinsic to this form of globalization is a growing legal and institutional framework within which the regimes of contemporary international trade, finance and investment are being conducted. The legal dimensions of that framework are best captured within the context of international economic law generally speaking, while the Bretton Woods MLIs and the WTO are the specific institutional mechanisms within which it is organized.

9. Another form of globalization can come from below (such as the environmental, women's and anti-nuclear movements, or in the case most relevant to this discussion, human rights struggles).[17] The human rights movement has long laid claim to a universalizing (indeed some would say a *globalizing*) mission. This is evident in the assertion that the regime of rights and freedoms established through the Universal Declaration of Human Rights - and the numerous other instruments that have since been promulgated in the same spirit - extend beyond the arena of purely national concern. The globalization-from-below activists have the potential to add a democratic dimension to the debates about globalization from above. In this way, globalization can be brought down from the rarefied and glorified atmosphere of corporate boardrooms, and home to the daily realities of ordinary human beings. Especially important, it can help them mobilize in resistance against the hegemonizing tendencies that globalization from above may present.[18]

10. Notwithstanding the above, a clear bias is manifest in the dominant modes of thinking that abound about globalization. Describing such thinking as "globalitarian" and "globalcentric", Arif Dirlik argues that such definitions of globalization are biased against both place and locality. Thus, the global is equated with "... capital, space, history and the power to transform ..." while the local is equated with "... place, labour, tradition and, not infrequently, women, indigenous people, peasants and others who are 'still attached to place'".[19] The implication is that the latter are marginal to the discourses on globalization, and that their knowledge and practices are unhelpful in the construction of a truly global contemporary world

Dirlik urges for review of this prejudiced approach to alternative visions of the manner in which the world can be constructed, and for mobilization of all the movements that feel they have a stake in the issue.[20] Indeed, there is a need for a recommitment to a bringing together of all the world's peoples around an agenda that does not seek to stifle the very productive and revolutionary innovations that technological development has unleashed.[21] However, it is essential that in so doing we do not forget basic and fundamental obligations that have been recognized and honoured for decades as essential to a wholesome human existence. Technology and economic development must be put to the service of humankind as a whole. In particular, such developments should not marginalize, discriminate or systemically deny access to the majority of the world's populace.

II. THE INSTITUTIONAL CONTEXT OF INTERNATIONAL TRADE, INVESTMENT AND FINANCE

11. Since the late 1990s and particularly at the present time, the role and place of international, rather than national forces and institutions has assumed a particularly prominent profile in the human rights debate. Indeed, one scholar has argued that "... the processes of militarism, economic restructuring, and trade and financial liberalization are the primary causes of human rights abuses".[22] In other words, it is no longer the State to which we should be paying attention, but rather to forces in the international arena. This assertion is only half-correct. There is little doubt that the State has been somewhat eclipsed by forces that operate in a fashion that pays little heed to issues of sovereignty, self-determination or statehood itself. However, such a view of the role of the State is not simply a shortsighted one; it also lets the State off too easily. As President Cardoso remarks, in the wake of globalization the role of the State has become much more complex today than at any other time:

> "In addition to its classic functions in the area of law enforcement, health, education, and foreign policy, the State must now meet increasing demands for more equity, more justice, a sound environment, and a greater respect for human rights. A more demanding society has to be matched by a more sophisticated State. A well-organized and efficient State will be better placed to meet those demands, many of them springing from globalization itself. Furthermore, the State must also be well equipped so that, in negotiating the rules within which globalization is to take place, national interests are preserved."[23]

Hence, rather than dismissing statehood as such it is more appropriate to view the phenomenon as having undergone a metamorphosis under the influence of various forces. Without doubt, among the most prominent of these forces can be found in the arena of international trade, investment and finance.

12. It is trite to point out that there are many dimensions to the debate on the directions that the regimes of international trade, investment and finance should assume. Neoliberal economists - whose voice is the dominant one in this discipline - argue simply that more is better.[24] Consequently, they contend that perceived barriers to the faster evolution of these international forces should be reduced both within the international context, as well as at the nation-State level. Within the framework of a variety of international and regional instruments, this vision of the world is receiving greater articulation by the day. It was the same vision that

informed the Organization for Economic Cooperation and Development (OECD) when it sought to introduce a Multilateral Agreement on Investment (MAI),[25] and it has been the vision of the Bretton Woods organizations in their various programmes since the 1980s. The issue is nevertheless not so black and white. As Lourdes Beneria and Amy Lind point out:

> "The benefits of trade may be both positive and negative, since its impact on economic activity produces both winners and losers. Therefore, any discussion of trade liberalization is not a simple matter of taking a "pro-trade" or an "anti-trade" position, rather, a substantive discussion requires an understanding of the nature of the process generated by trade liberalization and its likely consequences, so that appropriate policies may be developed and appropriate actions taken, particularly to compensate those negatively affected."[26]

From the preceding analysis, a number of questions emerge. Among the most prominent is whether the institutions designed to foster these policies pay heed to the possible negative effects - particularly in the human rights context - of their operations? We begin by examining the institution that is most often targeted whenever the issue of international trade and globalization crops up - the World Trade Organization (WTO).

A. The case of the World Trade Organization (WTO)

13. Despite being a relatively young international organization - having come into existence only in 1994 - the World Trade Organization (WTO) has attracted considerable intellectual and media attention. Following the Seattle protests at the meeting of world trade ministers, no other organization has been more closely associated with the phenomenon of globalization. Central to the ethos and practice of WTO is a set of principles that have provided the basic foundation for most contemporary developments associated with globalization. Among those principles we can cite free trade, open markets and tariff reductions. At the same time, the creation of WTO represented a veritable revolution not only in the scope of issues that were given attention under the trade regime created after Marrakech, but also with regard to the ramifications of failure to conform to that regime through its binding dispute-settlement mechanisms.[27]

14. The General Agreement on Tariffs and Trade (GATT), which the WTO succeeded, was provisional and only applied to goods, with the focus of the Agreement for most of its existence largely being border measures.[28] Among the new issues that came aboard following the Uruguay Round of talks in 1994 were services,[29] intellectual property rights (IPRs),[30] government procurement,[31] and investment measures.[32] In bringing these issues within the purview of the international trade-enforcement regime, not only did WTO assume tremendous powers, but it also raised several new issues vis-à-vis the relationship between the organization and individual States,[33] the broad questions of human rights, and the North/South geopolitical divide. For example, many developing countries take the demand to open their markets as a clear manifestation of Northern double standards, since the latter have consistently failed to open their own. In the trite observation of former World Bank Chief Economist Joseph Stiglitz, such exhortations often ring hollow:

> "As developing countries take steps to open their economies and expand their exports, they find themselves confronting significant trade barriers - leaving them,

> in effect, with neither aid nor trade. They quickly run up against dumping duties (when no economist would say they are really engaged in dumping), or they face protected or restricted markets in their areas of natural comparative advantage, such as agriculture or textiles."[34]

The truth is in fact much more acute. Indeed, the assumptions on which the rules of WTO are based are grossly unfair and even prejudiced. Those rules also reflect an agenda that serves only to promote dominant corporatist interests that already monopolize the arena of international trade.[35] The rules assume an equality of bargaining power between all the countries that engage in trade. They are also designed on the basis of a premise that ignores the fact that the greater percentage of global trade is controlled by powerful multinational enterprises. Within such a context, the notion of free trade on which the rules are constructed is a fallacy.

15. WTO has been described as the "... practical manifestation of globalization in its trade and commercial aspects".[36] A closer examination of the organization will reveal that while trade and commerce are indeed its principle focus, the organization has extended its purview to encompass additional areas beyond what could justifiably be described as within its mandate. Furthermore, even its purely trade and commerce activities have serious human rights implications. This is compounded by the fact that the founding instruments of WTO make scant (indeed only oblique) reference to the principles of human rights.[37] The net result is that for certain sectors of humanity - particularly the developing countries of the South - the WTO is a veritable nightmare.[38] The fact that women were largely excluded from the WTO decision-making structures, and that the rules evolved by WTO are largely gender-insensitive, means that women as a group stand to gain little from this organization.[39]

16. As is the case with other international institutions that deal with the international economy, WTO is afflicted by both processual and substantive problems. Superficially, WTO can be described as a democratic institution, because it adopts the principle of one member, one vote, its decisions are ostensibly based on consensus, and together these allow for more equitable outcomes.[40] Such superficial equality nevertheless masks a serious inequality in both the appearance and the reality of power in the institution. According to a recent International Federation of Human Rights (FIDH) report:

> "... whether one considers the dispute settlement procedures, the mechanisms for implementing agreements or the areas selected for negotiations, one comes to realize that the WTO structure is heavily tilted in favour of developed countries, such that developing countries are, de facto, kept away from decision-making mechanisms and from policy-making; similarly, their own specific problems are not sufficiently taken into account."[41]

In the deliberations and negotiations over further goals of trade liberalization, WTO has demonstrated a particular opacity in the face of the demand for transparency. At Seattle, despite warnings from developing country representatives (and the chants of protesters outside the conference hall),[42] representatives from the Northern countries persisted in developing a position in a process that excluded the majority of delegates. Unsurprisingly, the talks ended in deadlock.

and frustration.[43] The pattern continues, and is compounded by the fact that because of a lack of resources and personnel with the requisite expertise, developing countries are forever condemned to a marginal negotiating position within the WTO framework.[44]

17. Among the several issues that have caused concern for many developing countries is the attempt to forge a link between issues concerning trade, human rights, labour standards and the environment - particularly when they are couched in the terms of conditionality. The Havana Declaration of the Group of 77 that followed the South Summit held from 10 to 14 April 2000 was unequivocal in this respect, stating that it rejected "... all attempts to use these issues for resisting market access or aid and technology flows to developing countries".[45] The tying of trade to human rights in the fashion in which it has so far been done is problematic for a number of reasons. In the first instance, it too easily succumbs to the charge by developing countries of neo-colonialism.[46] Secondly, the commitment of Northern countries to a genuinely democratic and human rights-sensitive international regime is rendered suspect both by an extremely superficial rendering of the meaning of human rights,[47] and by the numerous double standards that are daily observed in the relations between countries of the North and those of the South. Thus, "human rights" conditionality when applied in contexts such as trade depends on a range of largely subjective elements extrapolated from the much broader human rights regime.[48] In other words, human rights are merely used as an opportunistic fulcrum to achieve the objective of liberalized markets. For example, why is there almost always never any linkage between the demands being made and the observation and respect for economic, social and cultural rights? The short answer is because many of the measures being pursued actually undermine the progressive realization of this category of rights. However, even when the linkage is made to civil and political rights, it is fraught with inconsistencies and national subjective interests predominate.

18. Many of the measures adopted by WTO have implications well beyond the question of international trade. Among the most controversial of those that WTO has thrown into the debate relates to the issue of patenting, especially of plant varieties and life forms.[49] According to Vandana Shiva:

> "The granting of patents covering all genetically engineered varieties of a species, irrespective of the genes concerned or how they were transferred, puts in the hands of a single inventor the possibility to control what we grow on our farms and in our gardens. At a stroke of a pen the research of countless farmers and scientists has potentially been negated in a single, legal act of economic highjack."[50]

The implications of such a measure are serious for the issue of food security, and its consequent relationship to the right to food. Furthermore, it represents outright piracy and appropriation of nature's bounty which has been designated for the whole of humanity and not for a privileged and technologically advanced few.[51]

19. At a minimum, the WTO needs to reform its processual mechanisms of deliberation so as to be more inclusive, and to allow for discordant (especially civil society) voices to be heard.

More fundamentally, however, it needs to review its approach to the substantive issue that it is supposed to tackle: the question of free trade. Again Prof. Stiglitz provides the most lucid examination of what would comprise a genuine regime of trade liberalization:

> "But trade liberalization must be balanced in its agenda, process and outcomes, and it must reflect the concerns of the developing world. It must take in not only those sectors in which developed countries have a comparative advantage, like financial services, but also those in which developing countries have a special interest, like agriculture and construction services. It must not only include intellectual property protections of interest to the developed countries, but also address issues of current or potential concern for developing countries, such as property rights for knowledge embedded in traditional medicines, or the pricing of pharmaceuticals in developing country markets."[52]

It is the above which WTO failed to do at Seattle, and has since failed to do in its aftermath. Following the Seattle Ministerial conference, the impression created by the WTO leadership, as well as by the countries of the North which had been the prime movers of the basic elements in the new WTO trade regime, was that there would be attempts made at reform. However, as one observer has pointed out, deliberations and pronouncements by the organization since Seattle do not appear to indicate much of a change of heart.[53] Thus, the problems of WTO are much larger than simply its approach to the substantive elements of its mandate. As in the case of OECD and MAI, WTO must radically review its mechanisms of operation, the role and place of both developing country participation and that of non-State actors such as NGOs, and its relationship to the United Nations system as a whole. In other words, what is required is nothing less than a radical review of the whole system of trade liberalization and a critical consideration of the extent to which it is genuinely equitable and geared towards shared benefits for rich and poor countries alike. WTO must take on board the many suggestions that have been made with respect to improving access and transparency at the organization, not only for the purposes of improving internal democracy, but also for the good of constructing a more equitable and genuinely beneficial international trading system.[54]

B. Globalization and the international financial institutions (IFIs)

20. As is the case with WTO, the twin Bretton Woods institutions - the World Bank and the International Monetary Fund (IMF) - have come under increased and intensified scrutiny. The April demonstrations represented a deep-seated resentment against two institutions that have in fact played a much longer and a critically more dominant role in shaping the essential characteristics of the global economy than WTO. Indeed, for many developing countries, the Bretton Woods organizations have not only more deeply penetrated their very existence and operation, but they have also had much more significant ramifications on basic human rights questions. Such questions extend from the right to self-determination and the observation of civil and political rights, to the ability of developing countries to progressively realize economic, social and cultural rights, especially in the arena of health, education and basic welfare.

21. Of the two institutions, the World Bank is generally recognized to have made more progress in attempting to address many of the criticisms against it, especially concerning its addiction to grandiose projects, its insensitivity to environmental, indigenous and minority

concerns and to the issue of gender.[55] It has tried to reach out to civil society and has declared that the alleviation of poverty is the main objective of the James Wolfenson presidency, which commenced in 1995. The Bank has also been active in designing mechanisms to address the issue of the debt burden, culminating in the highly indebted poor countries (HIPC) initiative. All these reforms have been undertaken in a bid to move away from what is known as the "Washington Consensus" - the set of shock-therapy measures of structural adjustment and economic liberalization that were applied in the 1980s and early 1990s in a bid to reform the macroeconomic policies of developing countries.[56] In the field of human rights, the Bank followed UNDP by issuing a set of guidelines linking its activities to what it perceived as its human rights obligations.[57] While the guidelines do indicate that the Bank is thinking about the issue, clearly it needs to do much more. The fact that the reforms do not go far enough is illustrated by the fact that both with respect to the Poverty Alleviation and HIPC initiatives, the frameworks of approach remain the same, i.e. conditionality and free market reforms.[58]

22. By contrast, the IMF has confined its steps towards reform to the release of information (on a comprehensive and well-organized Web site) including auditor's reports, and improving its systems of national and international oversight.[59] However, the Fund has been much more recalcitrant about being drawn into the debate about the human rights implications of its operations, arguing that its founding Charter mandates that it pay attention only to issues of an economic nature. The furthest the Fund has come in engaging any matter that may have human rights overtones is through a broad and rather nebulous document on "Good Governance".[60] Issued in 1997, the instrument is stated to be the IMF's response to the fact that "... a broader range of institutional reforms is needed if countries are to establish and maintain private sector confidence and thereby lay the basis for sustained growth".[61] Two points can be made about the Fund's Governance Guidelines. The first is that the purview of the Fund's concerns is extremely narrow, and confined to

> "... issues such as institutional reforms of the treasury, budget preparation and approval procedures, tax administration, accounting and audit mechanisms, central bank operations, and the official statistics function. Similarly reforms of market mechanisms would focus primarily on the exchange, trade, and price systems, and aspects of the financial system. In the regulatory and legal areas, IMF advice would focus on taxation, banking sector laws and regulations and the establishment of free and fair market entry".[62]

There is a heavy emphasis on corruption and the need for the establishment of transparent systems of operation within the countries that the Fund deals with. Although couched as "advice", for many developing countries IMF prescriptions are in fact edicts giving the latter little choice and almost no room for manoeuvre. The Guidelines also say nothing about the Fund itself, presumably because the systems and methods the Fund employs are beyond reproach. The second point - and perhaps the more critical one - is that throughout the guidelines there is absolutely no mention of the term "human rights". And yet, the linkage between macroeconomic policy and human rights issues has been firmly established.

23. Despite the fact that the Fund is well behind the Bank in its approach to human rights, a "democratic deficit" is apparent in both organizations. Take, for example, the issue of

leadership. As Helleiner and Oyejide point out, the governance practices of both institutions are "problematic". Our view is that they are in fact arcane and immoral, with the leadership of both institutions confined to a "royal family" of select individuals who must meet the criterion of regional - indeed ethnic - origin. Thus, "by custom" the President of the World Bank is from the United States, while the Managing Director of the Fund has always been a European. At the last changing of the guard, when long-serving Michel Camdessus prematurely resigned his position at the Fund last year, a slight impasse ensued when the United States initially backed Stanley Fischer as its candidate against the European choice.[63] One of the elements that was cited by the United States in coaxing developing (especially African) countries to root in Fischer's favour was that although a naturalized American, he was born in Zambia! Such practices demonstrate the duplicitous character of institutions that insist that the countries that borrow from them must be exemplars of what they describe as "good governance". Helleiner and Oyejide once again:

> "Although there may have been a rationale for such disproportionate voting arrangements and undemocratic management selection procedures within these institutions at the time of their foundation, it is difficult to defend them today - particularly when both institutions press borrowing countries to improve their own governance via conditions on their lending."[64]

The IMF continues to retain practices of intense secrecy, centralization of power and denial of responsibility even when crises can be traced to the policies that a country was forced to adopt on account of Fund conditionality. This was the case, to cite a recent example, when the East Asian countries were afflicted by currency shocks in the late 1990s. Indeed, the IFIs began by heaping much of the blame on the Governments involved. Adjectives such as "... poorly supervised", "poorly functioning," "badly-regulated," "corrupt" and "government-directed"[65] abound in the descriptions of the reasons for the crisis. It is as if the IFIs had nothing to do with the problems,[66] and indeed such comments represented a significant volte-face from what they had said about the very same countries only a few years earlier, describing them as "tigers", economic "miracles" and "impressive".[67] Although the IMF later admitted some connection between the crises and its policy prescriptions,[68] and conducted ad hoc evaluations of some of its programmes (with critical results),[69] there is no indication that the organization is willing to take the next most important step - accountability. Indeed, the fact that both in conception and practice, the policies of the Fund remain virtually the same as before the crisis illustrates that little has changed, either by way of conception, or genuine concern for the plight of the majority. It is still a case of counselling the swallowing of a bitter pill for the present with the promise of recovery and robust health in the future.[70]

24. Thus, the most critical question that emerges when discussing the issue of the responsibility of MLIs and kindred institutions is that of transparency and accountability. It is precisely for these reasons that the protesters in Washington assembled to condemn the Bank and the Fund.[71] As Smith and Naim argue:

> "The functional argument for transparency and accountability is equally important. No institution of authority now can long endure without the informed consent of those who

> are governed by it. Globalization itself is arming people with the information they need to give consent and, in some cases, the means to refuse it ... But lack of democratic processes is keeping international institutions weak ... People living in democracies are understandably reluctant to transfer allegiance and power to organizations less accountable (and even more remote) than their own national Governments."[72]

What is clear is that the institutional mechanisms of globalization have yet to seriously address the issue of human rights in a fundamental and democratic fashion - both with respect to their operations within countries, and also in relation to the internal make-up and functioning of their own institutions. If there is to be a genuine commitment to human rights in a holistic fashion, then these institutions must pay attention to both civil and political rights, as well as to economic, social and cultural rights. In addition, basic human rights principles - principles that can be translated into common parlance like transparency, accountability and participation - need to be applied to these organizations. The fact that the latter are still a problem was graphically demonstrated by the dramatic resignation of former Bank Chief Economist Joseph Stiglitz because of his open criticism of many of the Bank's and the Fund's policies, and for pushing too far in the direction of reform and democratization.[73] No other incident demonstrates so well that despite all the pretensions at reform, the IFIs still apply the old adage: "do as I say, but not as I do!".

III. GLOBALIZATION, EQUALITY AND NON-DISCRIMINATION

25. The preceding analysis allows us to turn to the issue of the relationship between globalization and equality and non-discrimination in a more concrete fashion. The two concepts are central to the corpus and ethos of human rights instruments and practice. The Universal Declaration and other human rights instruments are unequivocal in their declaration that all persons are equal, and that the right to non-discrimination is a basic and fundamental human right. The grounds upon which non-discrimination is prohibited are also clear, and have been expanded over time to accommodate new forms and expressions of an insidious practice that unfortunately is as old as humanity. Especially important are the prohibitions of discrimination based on race, colour, gender, religion and ethnicity. Indeed, with regard to certain of these prohibitions, it has been argued that they enjoy the status of *jus cogens*. As such, there can be no derogation from their observation even in times of war - the point in time at which derogations have been most easily justified.

26. It would be absurd to claim that globalization created inequality. Inequality and discrimination unfortunately existed long before globalization was recognized as a distinct phenomenon on the international scene. That globalization has caused global conditions of inequality and discrimination to worsen is clear even by simply examining the statistical data. UNDP uses the Internet as a prime indicator of the creation of and access to wealth today, and asks the critical question: Who is in the loop? The fact is that the "loop" of globalization has left out the vast majority of the world's citizenry. This means that not only is there further marginalization, but also increasing immigration in a world of ostensibly increasing plenty. If we ask a further question, viz. What is the colour, race or sex of those left out? The connection between globalization and the forces of inequality and discrimination become all the more graphic.

A. The contours of global inequality and racism in the twenty-first century

27. There are serious questions that emerge from an examination of the extent to which the phenomenon of globalization respects the basic human rights principles of equality and non-discrimination. The nature of contemporary global inequality is captured by an examination of the main elements that are touted as being the bedrock of the globalizing "revolution". This area is telecommunications. Unfortunately, according to Smith and Naim telecommunications are constricted by geography, gender, income and language.[74] These conditions are clear from a trite observation that has been made of the impact of globalization in one former Soviet-bloc country:

> "Globalization has not affected all Romanians with the same intensity or in the same way. Only cities in Romania (six of them) have airports that receive transborder flights. Most of the rural population lack cable television and have no awareness of the World Bank or the IMF. As of 1996, over half of [foreign direct investment] in Romania was placed in Bucharest alone. Largely owing to the expense of many transborder connections, globalization has gone furthest in Romania among the middle classes. A cellular phone and KFC fast food are too costly ... for a farmer in Transylvania or a shopkeeper in Târgu Frumos."[75]

The above statement points to one dimension of the globalization divide - the rural and the urban. That usually translates into another division: those who have and those without. In a continent like Africa where the vast majority of the populace is based in the rural area eking out a subsistence existence, the fact is that globalization has not improved things. Partaking in the processes of globalization, represented by the opening of free markets, the liberalization of trade barriers and the removal of protectionist barriers, is thus no guarantee that all will benefit.

28. There are clearly also problems concerning whether globalization is even of benefit to those who contribute a considerable amount to its success - workers around the world, legal and otherwise. Thus, while the countries of the developed part of the world clearly rely on migrant labour to sustain and operate their economies, the extent to which they either recognize or reward this category of person is debatable. In the trite observation of one writer, migrants (and especially domestic workers of various kinds) make up the "hidden state" in Europe and the industrialized countries of North America.[76] Paradoxically, increased integration - often touted as one of the major benefits of globalization - has not produced benefits for this very significant section of the population:

> "The drive towards a single European market, which has increased the mobility within the [Economic Community] of its Member States' citizens, has meant instead, increasing restrictions for migrant workers over the past few years. They cannot vote in local and national elections, in some countries they cannot form political organizations, and they are often not allowed to take jobs in the public sector. And yet, the economies of the EC members are increasingly dependent on this cheap, flexible labour force. They are an unprotected population, whose rights are often not addressed by the national legislation of either the receiving states or their states of origin ...".[77]

We may add that the vast majority of such people come from populations which are non-White - clearly demonstrating the racial and discriminatory aspects of this issue. That coloured minorities (whether indigenous to the country or immigrants) are statistically more often the targets of racist police attacks and discriminatory practices is thus clearly not accidental. Indeed, many people of colour in such countries view attacks of a racial nature as nothing out of the ordinary.[78]

29. Globalization has not only reinforced the traditional inequality between North and South, it has also reinforced inequalities within the North. And yet, those are the countries that are supposed to be the main beneficiaries of globalization.[79] Thus, in a comment on the situation of Black people in the United Kingdom in the 1990s, Stephen Small has argued that while many of the issues confronting people of colour remain the same, globalization has changed the form and added a higher degree of severity to the challenges.[80] Although his analysis was confined to the British situation, the following description could unfortunately be applied to an increasing number of countries in Europe and the Americas:

> "Race-related violence and other forms of abuse are escalating. Racialized discrimination in employment and education persists at significant levels, as does racialized intimidation by the police. The state and employers publicly and officially embrace equal opportunities, but by postponement, prevarication and delaying tactics, ensure it is not implemented!"

It is the paradox of growing wealth accompanied by growing inequality that is the bane of globalization. Nowhere is this paradox more apparent than in relation to the impact of the phenomenon of globalization on the general issue of gender relations, and on the plight of women in particular.

B. Globalization, gender relations and the situation of women

30. Among the distinct groups of society upon whom globalization's impact has been most telling, women clearly stand out. Few observers will deny that the general issue of gender relations globally, and the question of women's human rights specifically, has undergone significant transformation. Spurred on by the various international conferences, declarations and, most significantly, by the Convention on the Elimination of All Forms of Discrimination against Women, the respect for and recognition of women's human rights has made significant advances worldwide. Needless to say, while much has been achieved, there remains a considerable amount yet to be accomplished.[81] The phenomenon of globalization adds greater complexities to this quest, particularly in the economic arena, but also within the context of culture and politics.

31. Women have entered the workforce in large numbers in States that have embraced liberal economic policies. One United Nations survey concludes that "[i]t is by now considered a stylized fact that industrialization in the context of globalization is as much female-led as it is export led".[82] The overall economic activity rate of women for the age group 20-54 approached 70 per cent in 1996.[83] The highest absorption of women has been witnessed in the export-oriented industrial sector. This is especially the case in export processing zones (EPZs)

and Special Economic Zones (SEZs), and in those labour-intensive industries that have relocated to developing countries in search of cheap labour.[84] Investors have demonstrated a preference for women in the "soft" industries such as apparel, shoe- and toy-making, data-processing and semi-conductor assembling industries that require unskilled to semi-skilled labour.[85] Such industries are also labour intensive, service oriented and poorly paid. Thus, according to the Women's Environment and Development Organization (WEDO) women bear the disproportionate weight of the constraints introduced under the yoke of globalization.[86]

32. The process of economic liberalization has also spawned a huge growth in the informal sector and increased female participation therein. The participation of women in the informal sector is found to be typically higher than in the formal sector as it provides better opportunities of combining paid-work with household chores.[87] The reasons for the idealization of what is perceived to be a docile labour force are not hard to unearth. In many countries, workers in EPZs find unionization and collective bargaining nearly impossible. As part of the "race to the bottom" to attract foreign direct investment (FDI), some countries have either exempted EPZs altogether or relaxed existing national labour safeguards vis-à-vis EPZs.[88] Needless to say, such actions are in complete violation of International Labour Organization (ILO) standards encapsulated in the Declaration on Fundamental Principles and Rights at Work (1998).

33. The growth of the informal sector also means that traditional employment-related benefits and mechanisms of protection are not available to those employed in that sector.[89] Aside from the demand for cheap labour, the loss of jobs held by men and the consequent reduction in traditional family income has also contributed to the large influx of women into the labour market. Those women who cannot find factory work, or whose family circumstances do not make factory work possible, have had to seek work in the informal sector under labour conditions worse than in export-oriented industries. TNCs also find subcontracting and hiring part-time or temporary labour more cost-effective. The net result is poorer quality labour opportunities. Under these circumstances underemployment seems to be as big a problem as open unemployment.[90]

34. Deregulation and the privatization of State enterprises have been key components of structural adjustment programmes (SAPs) introduced by multilaterals as conditionalities attached to aid packages to developing countries. As Lim notes:

> "Labour market deregulation has been an important feature of structural adjustment programmes. There has been explicit deregulation, whereby formal regulations have been eroded or abandoned by legislative means; and implicit deregulation, whereby remaining regulations have been made less effective through inadequate implementation or systematic bypassing. Such deregulation has been based on the belief that excessive government intervention in labour markets - through such measures as public sector wage and employment policies, minimum wage fixing, employment security rules - is a serious impediment to adjustment and should therefore be removed or relaxed. Deregulation might mean more employment for women, but the danger is that such employment would tend to be on less favourable terms. The question is whether the market can be left almost entirely to determine the price of female labour and the conditions of female employment."[91]

The same author also points to the causal connection between the liberalization of trade and the preference for cheap labour - almost always provided by women - in the quest to realize comparative cost advantages.[92] Similarly, States around the world, but particularly in the geopolitical South have felt compelled to ease labour standards, modify tax regulations, and to generally relax standards of scrutiny and oversight in the bid to attract FDI in a mercilessly competitive global economic system. This "race to the bottom" has seen developing States engage in a perverse competition to provide the best investment environment by progressively lowering, *inter alia*, labour standards.[93]

35. The phenomenon of quantitatively increased employment opportunities accompanied by low-quality conditions of work is manifested especially in the EPZs. It is estimated that at the turn of the last century, 93 developing countries had EPZs, compared with 24 in 1976.[94] In a few countries such as Malaysia, the Philippines, the Republic of Korea and Sri Lanka it is the main employer of women. Women provide up to 80 per cent of labour requirements in EPZs.[95] Women also comprise the largest segment of migrant labour flows, both internally and internationally. Large numbers of rural women, often young and poorly educated, migrate to the metropolis in search of employment. In some countries this migration is largely to urban-based EPZs and SEZs. The vulnerability of these women makes them easy prey for exploitation, both economically and sexually. They are often willing to work under less suitable conditions of work than are acceptable to both men and to poor urban women.

36. In Asia, in particular, the migration of large numbers of female workers to the Middle East from, for example, West Asia, and South-East Asia, has had a strong impact both socially and economically. It has been estimated, for example, that the ratio of females to males who comprise migrant labour is 12:1 among Filipinos migrating to Asian destinations, 3:1 among Indonesians and 3:2 among Sri Lankans.[96] Many of these women work as domestic workers, seamstresses, nurses, assistants in retail shops and restaurants, and as entertainers (oftentimes in the sex industry).[97] While most women have the opportunity of earning higher wages than at home, labour conditions and mechanisms of both social and physical security in receiving countries seem to be perilous at best. More often than not, receiving States tend not to observe even minimal labour standards with regard to migrant workers, particularly women. Heavy economic dependence of the sending States on the inward monetary remittances of migrant workers has inhibited them from demanding fair labour conditions and protection from receiving States, thereby further weakening the position of such workers.[98]

37. Women in the agricultural sector have also been adversely affected by the promotion of export-oriented economic policies, trade liberalization and TNCs' activities in agriculture-related industries. Emphasis on export crops has displaced women workers in certain countries from permanent agricultural employment into seasonal employment. Subsistence farming has been severely affected in the new economic environment, leaving women farmers to seek seasonal employment.[99] Aside from the tenuous and low economic returns of seasonal agricultural employment, the Food and Agriculture Organization of the United Nations (FAO) has noted that the destruction of subsistence farming, increased industrial pollution and the loss of land to large commercial ventures, often financed by TNCs, have given rise to grave problems relating to food security and the health of the rural poor.[100]

38. Globalization also affects women who may not be integrated into the formal sector. Under the yoke of the SAPs that have been in vogue in most African countries since the early 1980s, women whose work is outside the arena of the globalized market in goods and services have been adversely affected. Rendered invisible by concepts such as "efficiency", "stabilization", and "cost-effectiveness", the labour of African women becomes the shock absorber of the processes of adjustment and the social costs that result therefrom. Unfortunately, the so-called social "safety nets" that have subsequently been introduced to "alleviate" the situation of these women have done little to fundamentally mitigate the crisis.

39. The United Nations Secretary-General has pointed to adverse labour conditions as a major factor contributing to the increased feminization of poverty.[101] The logical expectation that the demand for female labour will improve their bargaining position and drive up wages has not been realized. The very opposite appears to be taking place. Women are concentrated in "footloose" industries which can relocate their processes or components of production easily across frontiers into countries that provide a "better" investment environment, i.e. one that observes lower labour standards and more deregulation. The possibility of easy relocation for these light industries acts as a major disincentive to the raising of wages. This phenomenon affects labour forces in both developed and developing economies. It has been pointed out, for example, that after the adoption of the North American Free Trade Agreement (NAFTA), employers in the United States were able to stave off demands for higher wages by indicating the possibility of moving production offshore to an environment with a cheaper labour force.[102] In this context, it is important to pay heed to the call in the Beijing Platform for Action to review and modify macroeconomic policies and development strategies to ensure that they promote the rights of women.[103]

40. In dealing with the issue of poverty eradication, especially among women, the Secretary-General acknowledges that "[f]iscal policy should avoid compression of expenditure on health, education and skill formation, even under conditions of budgetary constraints ... At the international level, a main objective of development assistance should be to support national efforts for sustained human capital formation In the interested countries, the 20/20 initiative is particularly relevant in this regard."[104] The report goes on to emphasize the need for social safety nets to allow people weather adverse conditions created by slow growth and crisis (such as that in Asia), acknowledging that fast growth per se does not guarantee equitable distribution or social protection.[105] Interestingly, the IMF is among the institutions that have contributed to the compilation of the report, despite its largely deleterious role in fostering the Asian crisis in the late 1990s, and its only partial admission of culpability for the crisis.

IV. GLOBALIZATION AND THE APPLICABLE HUMAN RIGHTS FRAMEWORK

41. As is fairly apparent from the preceding discussion, the impact of the adverse consequences of globalization on the enjoyment of human rights is multidimensional; all aspects of human existence, be they political, economic, social or cultural, are affected. The negative impact on one dimension of human rights, e.g. economic rights, necessarily has a domino effect on other rights. This reality reinforces the principle enunciated in the Vienna Declaration and Programme of Action (1993) that human rights are "universal, indivisible, interdependent and interrelated".[106] Today, international human rights obligations have to be viewed through the

prism of this fundamental principle. The Charter of the United Nations recognizes the important linkages between the maintenance of international peace and security, the establishment of conditions of economic and social progress and development, and the promotion and protection of universal human rights.[107] A singularly important development is the imposition by the Charter of a legal obligation on Member States to take joint and separate action in cooperation with the Organization to promote, *inter alia*, higher standards of living, full employment and conditions of economic and social progress and development, and universal respect for, and observance of, human rights.[108] Action taken by Member States, either collectively or singly, to defeat this pledge is clearly a violation of the Charter, which under certain circumstances may amount to violations of principles of *jus cogens*.

42. The commitment of the United Nations to the indivisibility of human rights is reflected in the Universal Declaration of Human Rights. This instrument recognizes the right to an adequate standard of living, social security, the right to work and just and favourable conditions of work, and the right to education, in addition to traditional civil and political rights. Significantly, the Universal Declaration of Human Rights also recognizes the right of everyone to a social and international order in which the rights and freedoms set forth in it can be fully realized.[109] Furthermore, the Universal Declaration of Human Rights explicitly recognizes that nothing in it may be interpreted as implying a right to destroy any of the recognized rights.[110] The International Covenants on Economic, Social and Cultural Rights (ICESCR) and on Civil and Political Rights (ICCPR) further elaborate upon the foundation laid by the Universal Declaration of Human Rights. Both have been ratified by large numbers of States and are extremely important in pinpointing the specific legal obligations of State actors with regard to all aspects of human rights protection.

43. It is increasingly becoming clear that it is no longer tenable to draw a neat distinction between the nature of State obligations with regard to civil and political rights on the one hand, and economic, social and cultural rights on the other. United Nations human rights mechanisms have debunked the traditional view that civil and political rights entail only negative obligations, while economic, social and cultural rights give rise to the more complex issue of positive State obligations which require resources to be expended. The United Nations Human Rights Committee has interpreted certain rights guaranteed by the ICCPR as entailing positive obligations. This is clearly the case with regard to the right to life. In General Comment 6 (16) on article 6,[111] the Committee interpreted the right to life in a broad manner that requires States parties to take positive action, e.g. to reduce infant mortality, to increase life expectancy and to take measures to eliminate malnutrition and epidemics.[112]

44. The negative impact of globalization - especially on vulnerable sections of the community - results in the violation of a plethora of rights guaranteed by the Covenants. In particular, the enjoyment of fundamental aspects of the right to life, freedom from cruel, inhuman or degrading treatment, freedom from servitude, the right to equality and non-discrimination, the right to an adequate standard of living (including the right to adequate food, clothing and housing), the right to maintain a high standard of physical and mental health, and the right to work accompanied by the right to just and fair conditions of labour, freedom of association and assembly and the right to collective bargaining, have been severely impaired. Developing States are, more often than not, compelled by the dynamics of globalization to take measures that negatively impact on the enjoyment of those rights. The result is that States

cannot fulfil their international human rights obligations, even if they are desirous of improving the human rights situation in their countries. The critical question is the following: Can international economic forces that are engineered by both State and private actors be unleashed on humanity in a manner that ignores international human rights law?

45. The view that States or other actors cannot be held responsible for violations of economic, social and cultural rights is seriously being questioned as a flawed premise, both empirically and conceptually. Traditional interpretations of article 2 of the ICESCR view State obligations under the Covenant as being loosely drawn, permitting an absolute freedom to determine how and when States allocate resources for the realization of economic, social and cultural rights. This view is often entertained because of the inclusion in article 2 of provisions that a State party is required to take action with a view to "progressively realizing" the rights enumerated there "to the maximum of its available resources". However, in its General Comment on the nature of the States parties' obligations under the ICESCR,[113] the Committee on Economic, Social and Cultural Rights declared that concrete legal obligations are imposed by the Covenant under article 2. At a minimum, States parties are obliged to realize minimum standards relating to each of the rights utilizing available resources in an effective manner. The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997) drawn up by groups of experts, and increasingly gaining in currency before United Nations forums, have expanded on the General Comment. The Maastricht Guidelines recognize a triad of obligations - to respect, protect and fulfil.[114] As such, when State conduct falls short of these obligations, or fails to achieve the required level of realization of rights, it is responsible for *violating* the rights in the ICESCR.[115] Violations can occur either through commission or omission.[116] The jurisprudence of the Committee on Economic, Social and Cultural Rights that recognizes "minimum core obligations" on the part of States parties are echoed by the Maastricht Guidelines.[117] Such core obligations have to be fulfilled irrespective of resource or other constraints.[118] In determining whether a State party has utilized the "maximum of its available resources" attention shall be paid to the equitable and effective use of and access to available resources.[119] It is also significant that the Maastricht Guidelines recognize violations by States resulting from their failure to exercise due diligence in controlling the behaviour of non-State actors, such as transnational corporations, over which they exercise jurisdiction, when such behaviour deprives individuals of their economic, social and cultural rights.[120]

46. Both Covenants recognize the right to self-determination of peoples as being of fundamental importance to the enjoyment of other rights.[121] An important aspect of the right to self-determination is the right of peoples to exercise sovereignty over their natural wealth and resources. Article 1 (2) of both Covenants stipulates that "[i]n no case may a people be deprived of its own means of subsistence". Furthermore, the General Assembly adopted a resolution on "Permanent sovereignty over natural resources"[122] declaring, *inter alia*, that the aim of international cooperation is "... to further their [developing countries'] independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources ...".

47. International economic relations and the policies that drive those relations cannot in the name of laissez-faire economics be exceptions to the international rule of law. They are essentially subject to the dictates of international law, particularly those that recognize the

sovereign equality of nations, the right of self-determination of peoples and respect for human rights as cornerstones of modern international law. While States and multilaterals are directly obliged to comply with those principles, they are also obliged to ensure that private economic actors within their jurisdictions do not act in a fashion that abuses and blatantly violates those rights. According to Diller and Levy, referring specifically to the issue of coercive forms of child labour, where fundamental human rights norms are implicated, "... international law requires that treaty obligations, such as trade undertakings, be maintained only to the extent of consistency with these norms ...".[123] This is an obligation that extends beyond the arena of child labour alone, but can be applied to all facets that affect the nexus between trade and human rights law.

48. The right to development is of equal importance when examining the human rights implications of globalization. The international community through the General Assembly has recognized the right to development as an inalienable human right.[124] The United Nations Declaration on the Right to Development recognizes that the central focus of the process of development is the human person, who should be the active participant and beneficiary of the right to development.[125] Development itself is recognized as a multifaceted process that embraces the development of economic, social, cultural and political aspects of human life.[126] This position is affirmed by the widely respected Human Development Index advocated by UNDP as a means of realistically assessing levels of development. It is also affirmed by the Copenhagen Declaration and Programme of Action (1995) on social development.[127] The sum total of these positions is that development is envisaged as a process that enables the human person to fully enjoy all economic, social, cultural and political rights.

49. Gauging development purely on the basis of economic indicia is increasingly viewed with scepticism, as it does not reflect the ground realities, especially those relating to disparities in income distribution and living standards.[128] Such a position ignores the human dimension of development and the important linkage between development, human rights and peace. It overlooks the violent social and political forces that invariably are unleashed by extreme poverty and the denial of other human rights. If the forces of globalization are allowed to operate freely - overlooking the central premise of human-centred development - the spectre of massive levels of human rights violations resulting in grave social and political upheavals is a real one. The Copenhagen Declaration and Programme of Action, while recognizing the benefits of globalization, cautions:

> "At the same time, the rapid processes of change and adjustment have been accompanied by intensified poverty, unemployment and social disintegration. Threats to human well-being, such a environmental risks, have also been globalized. Furthermore, the global transformations of the world economy are profoundly changing the parameters of social development in all countries. The challenge is how to manage these processes and threats so as to enhance their benefits and mitigate their negative effects upon people."[129]

These very same sentiments are expressed in the Statement of the Committee on Economic, Social and Cultural Rights on globalization issued in May 1998.[130] It calls on the World Bank, the IMF and WTO to devise methods of measuring the impact of their policies on the enjoyment of economic, social and cultural rights (social monitoring) and to revise those policies accordingly.[131]

50. While the extant international legal framework imposes legal obligations to respect human rights mainly on States and intergovernmental organizations, it cannot be forgotten that the Universal Declaration of Human Rights calls on every individual and every organ of society to take action in order to secure the universal and effective recognition of the rights recognized by it.[132] The Universal Declaration clearly envisions the promotion and protection of human rights as a collective effort of both society and the State; it does not restrict the task to only State action. In fact, article 29 (1) declares that "everyone has duties to the community in which alone the free and full development of his personality is possible". It is not possible for private actors whose actions have a strong impact on the enjoyment of human rights by the larger society, therefore, to absolve themselves from the duty to uphold international human rights standards. It is even less acceptable for actors that have been created by States - such as the MLIs and WTO - to shirk their responsibilities under international law.

V. THE ROLE AND PLACE OF UNITED NATIONS INSTITUTIONS AND MECHANISMS

51. In recent years the United Nations has indicated its recognition of the need to provide leadership in dealing with the challenges posed by globalization. Secretary-General Kofi Annan has often reiterated the need to balance market forces with social needs if the world is to become a secure place for humankind. At the World Economic Forum held in Davos, Switzerland, in 1999, he articulated the need for a "Global Compact" to reap the best results of globalization, and in his message to the world trade ministers at the WTO meeting in Seattle he called for the need to pay heed to the gross inequalities in the global trading regime. Thriving markets, he said, can be guaranteed only if human security is secured. His most recent report to the General Assembly to mark the Millennium Summit (released in April 2000) is entirely devoted to the need to re-envision governance, both internationally and nationally, in the age of globalization. The new vision of governance, suggests the report, should take into account both the endless possibilities of globalization to improve human life and also the threats posed to human security. The report recognizes the centrality of human rights to people's expectations about the future role of the United Nations. Freedom from want, freedom from fear and ensuring a sustainable future are spelled out as the three main focal points of future United Nations action. Similarly, the United Nations High Commissioner for Human Rights has emphasized the need to make business human rights centred.[133] In her comment on Seattle, she stated that "[t]here can be no denying that human rights is a bottom-line issue. We need to see more companies adopting human rights principles and being held to account for putting them into action."

52. A survey of United Nations human rights mechanisms, however, demonstrates varying degrees of emphasis placed on the human rights implications of globalization.[134] On the whole, the Charter-based mechanisms have demonstrated a greater concern to place the issue of globalization at the centre of their agendas. The Economic and Social Council, the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights have all launched a number of initiatives to inquire into various aspects of the phenomenon of globalization and its impact on human rights. The Council has held discussions and consultations with multilaterals and specialized agencies on the impact of globalization on development and poverty.[135] The High Commissioner too has in recent years undertaken several initiatives to focus on issues such as poverty. Over the years, the Sub-Commission has underscored the need to emphasize the principle of the indivisibility of human rights, and has

focused on the importance of integrating economic, social and cultural rights into United Nations action in the field of human rights. Currently, the issue of indivisibility is situated squarely in the context of globalization. Aside from the present study, others on the right to food, access to drinking water, income distribution and the role of TNCs have been commissioned. As a result, mechanisms to address issues arising from the liberalization of economic activities have been proposed. A sessional working group on the working methods and activities of transnational corporations was set up at the fifty-first session of the Sub-Commission.[136] The establishment of the Social Forum, a proposal arising from the study on income distribution, concentrating mainly on economic disparities, is in the offing.[137]

53. Among the treaty-based human rights mechanisms, the Committee on Economic, Social and Cultural Rights has done the most in seeking to understand and monitor the impact of economic liberalization on its mandate. It has actively sought the inputs of multilaterals, specialized agencies and NGOs in developing its own position on the issue. Pursuant to a consultation with all those parties titled "Globalization and its impact on the enjoyment of economic, social and cultural rights", the Committee issued a statement on the subject.[138] In the statement, the Committee maps out its concerns over the negative impact of globalization on the enjoyment of economic, social and cultural rights, and calls on not only States but also multilaterals to pay enhanced attention to taking a rights-based approach to economic policy-making. Globalization per se is not viewed as a negation of human rights; rather, it is the primacy given to market forces without accompanying social safeguards that draws the attention of the Committee. These same concerns - in amplified form - are raised once again in the statement the Committee addressed to WTO Third Ministerial Conference in Seattle in November 1999. The Committee urged WTO members to adopt a human rights approach at the conference, recognizing the fact that "promotion and protection of human rights is the first responsibility of Governments".[139] The Committee also drew attention to the fact that in monitoring State compliance with the obligations under the ICESR, it is increasingly becoming aware of the extent to which international economic policies and practices affect the ability of States parties to fulfil their obligations under the Covenant.[140]

54. The Committee's recent General Comment on the right to food appears to deal with the issue of food security within the context of globalization.[141] Significantly, it draws attention to the responsibilities of private actors, aside from the obligation of States parties to appropriately regulate their conduct, in the realization of the right to adequate food. The comment goes on to stipulate that "[t]he private business sector - national and transnational - should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society".[142] Furthermore, it calls upon the IMF and the World Bank to pay attention to the protection of the right to food in drawing up lending policies, credit and structural adjustment programmes.[143] This approach by a treaty-based mechanism of also focusing on the responsibilities of multilaterals as well as private actors in protecting human rights is an extremely significant step in the current economic environment.

55. Most of the other treaty-based human rights mechanisms have increasingly shown concern over rising economic disparities that impact on their individual mandates. For example, in examining periodic country reports under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Committee has shown great concern over the

evidence of the feminization of poverty and the impact of economic policies on the rights of women.[144] However, so far the Committee does not appear to have taken the globalization "bull" by its horns, so to speak. The same could be said to be true of the Human Rights Committee. In General Comment No. 28 dealing with equality of rights between men and women, issues such as the feminization of poverty, declining social indicators and gender inequity in employment within the framework of globalization are not given much consideration. On the one hand, it is logical that it is the Committee on Economic, Social and Cultural Rights that should concentrate more on the issue of globalization, given its mandate. On the other hand, it is rather illogical for other human rights bodies not to pay equal attention to human rights issues arising from globalization in light of the proven principle of the indivisibility of human rights. Moreover, it is indisputable that today, as the Secretary-General points out in his report to the Millennium Summit, globalization is the single most important factor defining the quality of human existence. Unbridled economic liberalization has the potential to wreak havoc on human rights unless checked in a timely manner. It is therefore imperative that all human rights organs of the United Nations focus heavily on the human rights "fall-out" of free market forces and adopt appropriate mechanisms for dealing with resulting obstacles to the enjoyment of human rights, especially insofar as they relate to their respective mandates.

56. In further support of these measures, a number of United Nations specialized agencies have found occasion to address the question of globalization and its effect on their specific mandates. We can mention the United Nations Conference on Trade and Development (UNCTAD), the International Labour Organization (ILO), the Committee on the Rights of the Child (CRC) and the United Nations Development Programme (UNDP). The UNDP Human Development Report 1999 convincingly argues that reaping the benefits of a globalized economy cannot be done by merely forcing countries to open up their economies.[145] To make the most of those benefits there has to be a policy package. Governments have to ensure that sound policies for social development and protection, poverty eradication, income distribution and environmental protection are put in place, just as well-thought-out macroeconomic policies and institutions have to be established to ensure sound economic management. In the absence of that combination, sustained and sustainable development will remain illusory. It is also the case - as successive waves of financial crises have taught - that sound social policies have to be in place in order to absorb the shock of the vagaries of market forces.[146] The report also calls for a reorientation of global governance that ensures equity in international negotiations and that has as its central focus human development and human rights.[147]

57. The ILO has long engaged the phenomenon of globalization in a critical fashion. Just last year, it promulgated the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182), as a response to the effects of unbridled policies of economic liberation that have led to children being subjected to all forms of deleterious labour practices.[148] In a meeting with the World Bank in 1998, the Director-General of the ILO set out the reasons why the organization has an interest in the phenomenon of globalization:

> "We have a common interest in seeking to ensure that globalization is accompanied by steady growth in employment opportunities. This is the main means through which globalization benefits are transmitted to large numbers of

working people and their families. High rates of employment growth are essential for improving economic security and for achieving greater equity worldwide. Recourse to effective social dialogue, on this score too, has definite advantages, namely to explore what is feasible and realistic and to mobilize broad-based support for measures that have to be taken."[149]

58. An institution that has perhaps been greatly eclipsed in the debate about globalization but whose work has been fundamental to the United Nations coming to grips with the phenomenon is UNCTAD.[150] UNCTAD has been a consistent and incisive critic of the policies of economic liberalization pursued by the Bretton Woods organizations and offered the first critical reviews of the reasons for the Asian crisis that did not solely blame the Governments. Unfortunately, much of its work has not been taken up or integrated into the workings of the relevant organs of the United Nations system. Part of the problem may be that, as the head of the organization has often stated, UNCTAD lacks any negotiating authority, and also that its role was reduced to technical assistance, analysis and consensus-building.[151] Needless to say, at the UNCTAD X meeting in Bangkok in February this year, the organization's strengthened mandate on debt, finance and financial architecture as well as its positive engagement with civil society makes it a natural focal point within the United Nations system for further critical engagement with the issue of globalization.[152]

59. United Nations bodies and specialized agencies such as the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Environment Programme (UNEP) have all carried out work that has implications for the overall response by the United Nations to the phenomenon of globalization.[153] Although some agencies - like UNICEF with respect to the problem of the arsenic poisoning of wells in Bangladesh[154] - also have problems of accountability and transparency, there is a point at which they can engage collectively in order to arrive at a concerted and comprehensive inter-agency approach to the phenomenon of globalization.

60. It is abundantly clear that those human rights bodies and specialized agencies that have focused attention on the impact of globalization on human rights have been ably assisted by NGOs that monitor and are well versed in global economic trends. Those NGOs have been a driving force behind United Nations activities in this field, providing a sharper focus on relevant issues. The Committee on Economic, Social and Cultural Rights takes due cognizance of this fact and states that: "The political space that is opening up in the corridors of international policy making is largely a result of the spirited work of these NGOs."[155] The vital contribution of civil society has to be recognized and fostered in order for the United Nations to continue work on this issue.

61. Despite the clear concern manifested by the United Nations with respect to the various issues that surround globalization and that have various implications for the work of several aspects of the Organization, there are still many limitations on the extent to which the United Nations can comprehensively tackle the issue. Among the most obvious is the fact that it does not participate in the processes of negotiation and real decision-making concerning the processes of policy-making with respect to international trade, investment and finance. Secondly, some of the ways in which the United Nations and its agencies (like the UNDP) seek

to link up with big business and MLIs raise numerous concerns.[156] A danger exists of such linkages being exploited by the latter, while only paying lip-service to the ideals and principles for which the United Nations was created and to which it continues to be devoted. Moreover, because the actors who are being linked up with have considerably more financial and political clout, there is a danger that the United Nations will come out the loser.[157] As such, there is an obvious need for an a priori formulation of the basic principles on which such associations and arrangements are to be based, and for human rights issues to be clearly incorporated therein.

VI. CONCLUSIONS AND RECOMMENDATIONS

62. From the preceding analysis, it is fairly evident that the phenomenon of globalization, the processes and institutional frameworks through which it is propagated, and its multifaceted nature have numerous implications for the promotion and protection of all human rights. This implies that there is a need for a critical reconceptualization of the policies and instruments of international trade, investment and finance. Such reconceptualization must cease treating human rights issues as peripheral to their formulation and operation. In other words, there is a dire need for human rights - with a particular emphasis on questions relating to equality and non-discrimination - to be brought directly into the debate and the policy considerations of those who formulate the policies and operate the institutions that are at the forefront of the drive for the increased globalization of contemporary society.

63. There is a growing clamour - particularly from the main beneficiaries of globalization - that rules need to be established to govern the international economy, with a specific focus on questions such as copyright violations, trade sanctions, and protections for increased foreign investment. It is this desire that led to the articulation of the Washington Consensus and structural adjustment programmes (SAPs) by the Bretton Woods organizations, the attempt to forge ahead with a Multilateral Agreement on Investment (MAI) in the OECD, and ultimately to the creation of WTO. Unsurprisingly, most such demands emanate from those who are already benefiting to a considerable degree from the current inequities in the global economy.[158] However, what is required is a more balanced approach, which ensures that human rights principles are integrated into the rule-making processes from the outset. The primacy of human rights law over all other regimes of international law is a basic and fundamental principle that should not be departed from. In seeking to achieve this objective critical challenges must be made to the dominant neoliberal economic framework of analysis, and in particular to the measures of austerity and punitive conditionality that have been the modus operandi of the existing system. Further reviews of existing debt relief and poverty eradication measures must also be undertaken from a human rights perspective.

64. There can be little doubt that the involvement of women in the elaboration of the regimes governing international trade, investment and finance has been rather abysmal. Indeed, women continue to be a grossly under-represented group within institutions such as WTO and the IMF, and even the World Bank. Furthermore, the attempts to conduct gender-related analyses of the activities of such organizations have been few and far between - especially from within. Consequently, there is a very great need to "engender" the institutional frameworks within which the processes of globalization are being elaborated. Furthermore, there is an urgent need to conduct gender-specific analyses of the impact of globalization in its trade, investment and financial aspects.

65. Quite clearly, the rules of international trade, investment and finance require urgent reform. At the same time, if this study has shown nothing else, it is that the institutions that currently make the rules that govern the processes of globalization as we know them also require reform.[159] Such reform must deal with issues concerning participation and involvement, transparency in decision-making, negotiations, dispute settlement, and trade and investment policy reviews. Issues of leadership, recruitment and inclusiveness must likewise be addressed. The running question that needs to be asked in such a review is: To what extent do existing practices correspond to the basic tenets of human rights law?[160] Furthermore, mechanisms for conducting critical in-house and external evaluations and complaint investigations (ombudspersons) should be established. Central to these processes of reform must be the numerous non-State and civil society voices that have been at the forefront in articulating the grievances of humanity towards the unbridled spread of a global system of economic ordering that has produced few benefits for the majority of humankind.

66. In the same way that the Sub-Commission has embarked upon a process of formulating a draft code of conduct for TNCs, it is time that an attempt was made to formulate guidelines that elaborate the basic human rights obligations of the main actors within the context of globalization. These guidelines would be applied not only to the various regimes of international trade, investment and finance, but also to the institutional arrangements within which these regimes are housed. These include the Bretton Woods organizations, WTO and regional organizations such as the OECD, the Asian and African Development Banks (both known as ADB), and the host of other agencies that have been created to deal with the promotion and regulation of international and regional trade, investment and finance. Part of this process can include the elaboration of a framework within which these actors can begin to conduct human rights impact assessments (HRIAs) in order to be able to assess the human rights implications of their activities before they execute them.

67. Despite the fairly active engagement of a number of United Nations bodies and specialized agencies with the issue of globalization, much more can still be done. In the first instance, those organizations which appear not to have been as deeply involved in the issue (and particularly with its human rights implications), such as the World Intellectual Property Organization (WIPO) and the World Health Organization (WHO), should begin to address the issue in a more critical and far-reaching manner. Furthermore, there should also be more cross-agency dialogue, both within the United Nations system and across institutional boundaries with the MLIs and WTO. The basic premise for such dialogue must be the elaboration of the fundamental human rights principles that underpin their activities in the arenas of international trade, investment and finance.

68. Given that the parameters of the subject of globalization remain very wide, and that even within the context of this preliminary report there are numerous issues that require deeper consideration, it is recommended that the Special Rapporteurs remain seized of the subject and prepare a final report for submission to the Sub-Commission and the Commission at their next sessions.

Notes

[1] This paper has been written with the assistance of the Centre for the Study of Human Rights, the University of Colombo, the Nadesan Centre and Shalini Perera, all of Colombo, Sri Lanka. It has also benefited from interaction with the pioneer students on the joint African LL.M in Human Rights and Democratization programme. Rose Ssengendo at Makerere University, Uganda, and Margot Solomon of Minority Rights Group (MRG), London, also provided valuable materials and research support for the study. The authors express their gratitude.

[2] Sub-Commission decision 1999/102. The Special Rapporteurs are aware that no discussion of globalization can omit consideration of the issue of TNCs - regarded by many to be the "engines" of globalization. In order to avoid duplicating the work of the Working Group, however, this preliminary report does not cover TNCs in any great depth.

[3] The Bretton Woods agencies comprise the International Monetary Fund (IMF) and the World Bank family, made up of the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), the International Development Agency (IDA), and affiliated organizations such as the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for the Settlement of Investment Disputes (ICSID). It is interesting to note that the attempt to create an international trade organization (ITO) as part of the Bretton Woods agencies in the post-war period was unsuccessful, which is why the world was stuck with the much looser General Agreement on Tariffs and Trade (GATT). See, John H. Jackson, "Fragmentation or Unification Among International Institutions: The World Trade Organization", New York University International Journal of Law and Politics, vol. 31, No. 4 (1999), at pp. 826-827.

[4] See Agreement establishing the WTO, signed at Marrakech, Morocco, 15 April 1994. Also see resolution 1999/30 of the Sub-Commission.

[5] This may be because - in the words of one scholar - globalization "...involves arguably the most fundamental redesign of the planet's political and economic arrangements since at least the Industrial Revolution". See, Jerry Mander, "Facing the Rising Tide", in The Case Against the Global Economy: And for a Turn Toward the Local, (Jerry Mander and Edward Goldsmith, eds.) Sierra Club, San Francisco, 1996, at p. 3.

[6] Last year's Reith Lectures presented by Sir Anthony Giddens of the London School of Economics were exclusively devoted to the issue. The 2000 lectures were devoted to Sustainable Development with obvious links to the topic. See especially Vandana Shiva, "Globalization and Poverty" (accessed on 13 May 2000 at: http://news.bbc.co.uk/hi/english/static/events/reith_2000/lecture5.stm).

[7] The UNDP Human Development Report 1999 was focused on globalization, and at the Group of 77 (G-77) South Summit in April 2000, a significant portion of the meeting and the final declaration were devoted to the issue. See, UNDP, Human Development Report 1999, and the Havana Programme of Action (accessed on 21 May 2000 at: http://www.g77.org/summit/ProgrammeofAction_G77Summit.htm).

[8] See, "Globalization and Human Rights", (accessed on 6 May 2000 at: http://www.pbs.org/globalization/home.html).

[9] Ibid.

[10] One scholar has even gone so far as to argue that globalization is a new human right! See Michael D. Pendleton, "A New Human Right: The Right to Globalization", Fordham International Law Journal, vol. 22, No. 4, pp. 2052-2095.

[11] For a good analysis of the impact of the Seattle conference see, Miloon Kothari and Peter Prove, "The WTO's 3rd Ministerial Conference: Negative Impressions Mask Positive Developments in Seattle", Economic and Political Weekly (8 January 2000).

[12] See Arie M. Kacowicz, "Regionalization, Globalization, and Nationalism: Convergent, Divergent, or Overlapping Alternatives?".

[13] This point has come to the fore in the debate about genetic engineering, and especially in the discussion over the issue of patenting life forms such as "Dolly" the artificial sheep. It was a point taken up by the Prince of Wales and the discussants in the final round-table discussion of the 2000 Reith Lectures. See, http://new.bbc.co.uk/hi/english/static/events/reith 2000/lecture6.stm).

[14] See Fernando Enrique Cardoso, "Globalization and International Relations: Public Address to the South African Institute of International Affairs", Johannesburg, 26 November 1996, at pp. 5-6.

[15] This point is made very clearly by Bonnie Campbell, "Canadian Mining Interests and Human Rights in Africa in the Context of Globalization", International Center for Human Rights and Democratic Development (ICHRDD) Working Paper (accessed on 6 May 2000, at http://www.ichrdd.ca/PublicationsE/globAfrCamp.html).

[16] Paul Streeten, "Globalization and its Impact on Development Co-operation", Development, vol. 42, No. 3 (September 1999), at p. 11.

[17] Some may describe these as "counter-globalization" movements, but the connection between the use of information and technology (such as the Internet) by both sides, for example, is apparent. See, Robert O. Keohane and Joseph S. Nye, Jr., "Globalization: What's New? What's Not (And So What?)", Foreign Policy (2000).

[18] [Text missing.]

[19] Arif Dirlik, "Globalism and the Politics of Place", Development, vol. 41, No. 2 (June 1998), at p. 7.

[20] Ibid., at pp. 11-12.

[21] Thomas Waligren, "Political Semantics of Globalization: A Brief Note", in Development 42/2 (June 1998), at p. 32.

[22] Anne Orford, "Contesting Globalization: A Feminist Perspective on the Future of Human Rights" in Transnational Law and Contemporary Problems, vol. 8, No. 2 (1998), at p. 173.

[23] Cardoso, op. cit. at note 14, p. 5.

[24] See, for example, Organization for Economic Cooperation and Development, Open Markets Matter: The Benefits of Trade and Investment Liberalization (1998).

[25] The Special Rapporteurs extensively examined this issue in their report presented at the fifty-first session of the Sub-Commission (see E/CN.4/Sub.2/1999/8).

[26] Lourdes Benería and Amy Lind, "Engendering International Trade: Concepts, Policy and Action".

[27] See Yash Tandon, Globalization and Africa's Options, International South Group Network, Harare, 1999, at p. 11.

[28] See, Jackson, op. cit., at note 3, pp. 824-825.

[29] The General Agreement on Trade in Services (GATS), 15 April 1994. Reprinted in International Legal Materials, vol. 33, at p. 67.

[30] The Agreement on Trade Related Intellectual Property Rights (TRIPS), 15 April 1994, Annex 1C to the Marrakech Agreement. Reprinted in International Legal Materials, vol. 33, at p. 81.

[31] The Agreement on Government Procurement (AGP).

[32] The Agreement on Trade Related Investment Measures (TRIMS), 15 April 1994 in Law and Practice of the World Trade Organization, Treaties Booklet 1, Release 95-1, at 161 (Joseph F. Denin, ed.), 1995.

[33] See Jackson op. cit., at note 3, p. 825.

[34] Joseph F. Stiglitz, "Trade and the Developing World: A New Agenda", Current History (November 1999), at p. 387.

[35] See Barry Coates, "Why Free Trade is A Myth", The Independent, London, 10 October 1999.

[36] Ahmed Mohiddin, "Partnership: A new buzz-word or realistic relationship?" Development, vol. 41, No. 4 (1997) at p. 7.

[37] As Robert Howse and Makau Mutua have pointed out, the preamble to the WTO Agreement only refers to the raising of "standards of living" and not explicitly to human rights. See, Robert Howse and Makau Mutua, Trading in Human Rights: The Human Rights Obligations of the World Trade Organization, ICHRRD (April 2000), at p. 13.

[38] For a good analysis, see Yash Tandon, "The World Trade Organization and Africa's Marginalization", Australian Journal of International Affairs, vol. 53, No. 1 (1999), at pp. 83-94.

[39] Myriam Vander Stichelle, Trade Policy, the WTO and Gender (Information Paper of the Informal Working Group on Gender and Trade, November 1998), esp. pp. 16-20.

[40] Gerry Helleiner and Ademola Oyejide, "Global Economic Governance, Global Negotiations and the Developing Countries", in UNDP, Globalization with a Human Face: Background Papers to the Human Development Report 1999, at p. 112.

[41] Anne-Christine Habbard and Marie Guirand, The WTO and Human Rights, FIDH Position Paper (November 1999), accessed on 14 May 2000.

[42] The Organization for African Unity (OAU) issued a statement that mainly condemned the processual aspects of the meeting, using words such as a "lack of transparency" and the "marginalization" of African countries: "We are particularly concerned over the stated intentions to produce a ministerial text at any cost including at the cost of procedures designed to secure participation and consensus". See, "Africa Rejects WTO Deal" (AFP), reported in the The New Vision, Kampala, 4 December 1999, at p. 31.

[43] "WTO Talks End in Failure" (AFP), reported in The New Vision, Kampala, 6 December 1999, at p. 61.

[44] As Baker Wairama points out, a country like Uganda has only a single trade representative at the WTO headquarters in Geneva compared to an average of seven from each OECD country, supported by a coterie of aides. Baker G. Wairama, "Impact of the World Trade Organization (WTO) on Uganda", paper presented to a Uganda Law Society conference on International Trade Law and Uganda: Closing the Gaps, Kampala, April 2000, at p. 4.

[45] Havana Declaration of the G-77 South Summit, 14 April 2000 (accessed on 6 May 2000 at http://www.g77.org.).

[46] This was implicit in a veiled attack made by World Bank President James Wolfenson on the conditionality strategies applied by the Fund. See, Stephany Griffith-Jones and José Antonio-Ocampo, The Poorest Countries and the Emerging International Financial Infrastructure, Almqvist and Wiksell International, Stockholm, 1999, at p. 56.

[47] At Seattle, Secretary-General Kofi Annan issued the same message to the trade ministers, stating:

> "... globalization must not be used as a scapegoat for domestic policy failures. The industrialized world must not try to solve its own problems at the expense of the poor. It seldom makes sense to use trade restrictions to tackle problems whose origins lie not in international policy. By aggravating poverty and obstructing development, such restrictions often make the problems they are trying to solve even worse."

Kofi Annan, "Globalization - No Excuse for Domestic Failures", The East African, 6-12 December 1999, at p. 12.

[48] One such area is the issue of labour rights which the International Confederation of Free Trade Unions (ICFTU) and the American Confederation of Labour - Congress of Industrial Organization (AFL-CIO) are pushing to have included in WTO. However, as Walden Bello has argued, such a strategy is deeply flawed for a number of reasons:

> "First, by pursuing this objective through the WTO the IFCTU is conferring legitimacy on an international economic system which - at every other turn - squeezes and exploits workers. Second, it disregards the fact that many of the WTO agreements prohibit or restrict the power of national governments to implement policies which would improve the conditions for the mass of workers, especially those in the agricultural sector who comprise 59 per cent of the workforce in the Third World. Finally, and critically, it completely ignores the decisive role of footloose capital in keeping wages low and pitting worker against worker."

Nicola Bullard, "It's time for 'uncivil' society to act", Focus on Trade, No. 47 (March 2000, accessed at: http://www.focusweb.org).

[49] See Krysti Justine Guest, "Exploitation Under Erasure: Economic, Social and Cultural Rights Engage Economic Globalization", Adelaide Law Review, vol. 19, No. 1 (1997), at p. 81.

[50] Vandana Shiva, "Intellectual Property Rights and Bioethics", paper presented at El Taller: International Conference and General Assembly on "The New Millennium: Globalization and its Challenges", Tunis, 12-16 November 1998 (on file with author).

[51] There are numerous other problems associated with the issue of intellectual property in WTO, including the potential impact on agriculture and health services. See the report by Dagi Kimani, "Intellectual Property Bill Faces Opposition", The East African, 29 May-4 June 2000, at p. 7.

[52] Stiglitz, op. cit. at note 34, p. 387.

[53] International Centre for Trade and Sustainable Development (ICSTD), "Quad Offers Weak Starting Point for Confidence-building Package", in Bridges: Between Trade and Sustainable Development, Year 4, No. 3 (April 2000), at p. 2.

[54] See, Andrew L. Strauss, "From GATTzilla to the Green Giant: Winning the Environmental Battle for the Soul of the World Trade Organization", University of Pennsylvania Journal of International Economic Law, vol. 19, No. 3 (1998), p. 729.

[55] Needless to say, the Bank still has its critics. Writing in The Guardian, George Monbiot states:

> "Every one of the bank's policies is beset by contradictions. It claims, for example, to be the champion of free choice, yet its prescriptions are resolutely Maoist. It promulgates precisely the same approach to development everywhere on earth, regardless of circumstance. It rules not by science but by slogan: the great leap forward will be achieved by means of 'comparative advantage', 'privatization', and 'trade liberalization'. It keeps pursuing its crazy schemes even in the face of repeated failure ...".

See, George Monbiot, "World Bank Promotes Poverty", The New Vision, 16 April 2000, at p. 6.

[56] See Cord Jakobeit, "The World Bank and Human Development: Washington's New Strategic Approach", Development and Cooperation, No. 6 of 1999, at p. 4.

[57] See International Bank for Reconstruction and Development/World Bank, Development and Human Rights: The Role of the World Bank (1998).

[58] See, Shalmali Guttal, "The Many Uses of Poverty", Focus on Trade, No. 50 (May 2000). In the case of Uganda - one of the first beneficiaries of the HIPC initiative - it appears that the Bank has now introduced new conditionalities after the Government met all those initially set. The Uganda Debt Network (the local branch of the Jubilee 2000 campaign) referred to the introduction of the new conditionalities as a "shifting of the goal posts". Uganda Debt Network, "Open Letter on Debt Relief for Uganda", 19 May 2000.

[59] "Who will stand up to IMF for reform?" (German Newspaper News Service), The New Vision, 27 September 1999, at p. 12.

[60] International Monetary Fund, Good Governance: The IMF's Role, 2 July 1997 (accessed on 10 March 2000 at: http://www.imf.htm).

[61] Ibid., preamble at p. 1.

[62] Ibid., para. 6.

[63] The impasse ended when the United States agreed to support Europe's second candidate, Horst Koehler - the former head of Eastern European Development Bank. See, "International Monetary Fund Race Appears Over After US Endorsement", Business Recorder, 15 March 2000 (accessed on 27 May 2000 at: http://www.brecorder.com/story/S00SDC15/SDC15172.htm).

[64] See Helleiner and Oyejide, op.cit. at note 40, p. 111.

[65] Greg Mills, "The Future of Globalization", in South African Journal of International Affairs, vol. 6, No. 1 (1998), at p. 83.

[66] For an analysis of the interests involved and of the role of the IMF, see Walden Bello, "Speculations, Spins and Sinking Fortunes", Development Dialogue (1998: 1), p. 42.

[67] See IMF, Annual Report 1997, esp. pp. 59-60.

[68] See International Monetary Fund: Hearings Before the Sub-Commission on General Oversight and Investigations of the House Committee on Banking and Financial Services, 105th Congress (1998), at p. 5. See also, David Katona, "Challenging the Global Structure through Self-determination: An African Perspective", American University International Law Review, vol. 14, No. 6 (1998), at pp. 1458-1462.

[69] For example, the Fund appointed a team led by John Crow - the former head of the Bank of Canada - to analyse its operations last year. In a report that was issued just before its annual meeting towards the end of 1999, the IMF was accused of "... failing to anticipate crisis spots in the international economy, setting the wrong priorities in its efforts to tackle economic problems around the world, and failing to reform a bureaucratic culture where employees are often afraid to speak out or strongly express their own view". "IMF Now Under Fire" (German Newspaper Service), The New Vision, 28 September 1999, at p. 10.

[70] Thus, First Deputy Managing Director of the Fund Stanley Fischer could offer the following counsel to the people of Bulgaria: "... for now the transition process may feel as though it is all effort and no reward. But other countries have been through the same adjustment pains and emerged stronger and better off in the end." See, "The Lessons of Reform - Ten Years On", (accessed on 27 May 2000 at: http://www.imf.org/external/np/speeches/2000/052500.htm).

[71] See, Joseph Stiglitz, "The Insider: What I Learned at the World Economic Crisis", The New Republic (online), 17 April 2000 (accessed on 2 May 2000 at: http://www.thenewrepublic.com/041700/stiglitz041700.html).

[72] Gordon Smith and Moisés Naim, Altered States: Globalization, Sovereignty and Governance, Ottawa, International Development Research Council, 2000, at p. 17.

[73] Louis Uchitelle, "World Bank Economist Felt He Had to Silence Criticism or Quit", New York Times, 2 December 1999 (accessed on 16 April 2000 at: http://www.globalpolicy.org/socecon/bwi-wto/stiglitz2.htm).

[74] Smith and Naím, op. cit., note 712, at p. 43.

[75] Jan Arte Scholte, "Globalization, Governance and Democracy in Post-Communist Romania", Democratization, vol. 5, No. 4, at pp. 66-67.

[76] Bridget Anderson, Britain's Secret Slaves: An Investigation into the Plight of Overseas Domestic Workers, Anti-Slavery Society, London, 1993.

[77] Ibid., at p. 71.

[78] See Terri Judd, "Dead Man Thought Racism was Routine", The Independent, London, 3 November 1999, at p. 4.

[79] See Guest, op. cit., note 49, at pp. 79-82.

[80] Stephen Small, "Racism, Black People, and the City in Britain", in Globalization and Survival in the Black Diaspora: The New Urban Challenge (Charles Green, ed.), State University of New York Press, Albany, 1997.

[81] For example, it is only very recently that an individual complaints mechanism for women has been incorporated into the CEDAW mechanism.

[82] United Nations, 1999 World Survey on the Role of Women in Development: Globalization, Gender and Work, (United Nations Publication, Sales No. E.99.IV.8) at p. 9.

[83] Ibid., p. 8, note 23.

[84] One estimate states that of the 27 million people employed in EPZs worldwide, a phenomenal 90 per cent are women. See, John Hilary, Globalization and Employment: New Opportunities, Real Threats (Panos Briefing No. 33, May 1999) at p. 1.

[85] UNDP, *supra* note 7, at p. 14.

[86] Riham el-Lakany, WTO Trades off Women's Rights for Bigger Profits, Women's Environment and Development Organization (News & Views), vol. 12, Nos. 2 and 3 (November 1999) at p. 1.

[87] Ibid., p. 11.

[88] Ibid., p. 10.

[89] Ibid., p. 14, and Lin Lean Lim, More and Better Jobs for Women: An Action Guide, ILO, Geneva, 1999, pp. 19-20.

[90] The role of employment and work in poverty eradication: the empowerment and advancement of women: report of the Secretary-General (18 May 1999) (E/1999/53).

[91] Lim, op. cit. at note 89, pp. 19-20.

[92] Ibid., pp. 30-31.

[93] See Deborah Spar and David Yoffie, "Multinational Enterprises and the Prospects for Justice", in Journal of International Affairs (Spring 1999), vol. 52, No. 2, p. 557.

[94] United Nations, op. cit., at note 82 at p. 10.

[95] Lim, op. cit. at note 89 p. 31.

[96] Ibid., Box 1, p. 11.

[97] Laurie Nicole Robinson, "The Globalization of Female Child Prostitution: A Call for Reintegration and Recovery Measures Via Article 39 of the United Nations Convention on the Rights of the Child", Indiana Journal of Global Legal Studies, vol. 5, No. 1 (1997), p. 239.

[98] Ibid. at pp. 31-32.

[99] United Nations, op. cit., at note 82, pp. 11-12.

[100] Food and Agriculture Organization of the United Nations, Rural Women and Food Security: Current Situation and Perspectives, 1998, pp. 43-44.

[101] See supra note 90, paras. 19-21.

[102] United Nations, op. cit. at note 82, pp. 15-16.

[103] Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations Publication, Sales No. E.96.IV.13), chap. I, resolution 1. Strategic Objective A. 1, pp. 40-44.

[104] See supra note 90, paras. 48-49 (emphasis ours).

[105] Ibid., paras. 58-62.

[106] A/CONF.157/24(Part I), chap. III. para. 5.

[107] See Charter of the United Nations (1945), Preamble, Article 1 and Article 55.

[108] Ibid., Articles 55 and 56 read together.

[109] Ibid., Article 28.

[110] Ibid., Article 30.

[111] Report of the Human Rights Committee, Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40, (A/37/40) (1982), annex V.

[112] See also Dominic McGoldrick, The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights, Clarendon Press, 1991, pp. 329-330.

[113] General Comment No. 3 (1990), Committee on Economic, Social and Cultural Rights, Report on the Fifth Session, Economic and Social Council, Official Records 1991, Supplement No. 3 (E/1991/23-E/C.12/1990/8), annex III.

[114] Maastricht Guidelines, clause 6.

[115] Ibid., clause 11; Limburg Principles, clauses 70-72.

[116] Maastricht Guidelines, clauses 14 and 15.

[117] Ibid., clause 9.

[118] Ibid.

[119] Limburg Principles, clauses 25-28. Maastricht Guidelines, clause 10.

[120] Maastricht Guidelines, clause 18.

[121] Article 1 in both the ICESCR and the ICCPR.

[122] General Assembly resolution 1803 (XVII) of 14 December 1962.

[123] See Janelle Diller and David Levy, "Child Labour, Trade and Investment: Toward the Harmonization of International Law", American Journal of International Law, vol. 91, No. 4 (1997), at p. 678.

[124] Declaration on the Right to Development, General Assembly resolution 41/128 of 4 December 1986, article 1.

[125] Ibid., article 2.

[126] Ibid., preamble and article 1.

[127] Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995 (United Nations publication, Sales No. E.96.IV.8), chap. I, resolution 1, annex I and II.

[128] See e.g. the final report prepared by Mr. José Bengoa, Special Rapporteur, on the relationship between the enjoyment of human rights, in particular, economic, social and cultural rights, and income distribution, (E/CN.4/Sub.2/1997/9 and E/CN.4/Sub.2/1998/8).

[129] See supra note 127, annex I, para. 14, (emphasis ours).

[130] Reproduced in International Human Rights Reports, vol. 6, No. 4 (1999), p. 1176.

[131] The concern of the Committee about globalization has continued, and recently led to a meeting between the Committee and activist organizations on the subject of globalization during the Committee's May 2000 session. See, The role of the Committee on Economic, Social and Cultural Rights in a globalizing economy (meeting on 6 May 2000 at Palais Wilson).

[132] Universal Declaration of Human Rights, preamble.

[133] Comment on the Seattle meeting by the United Nations High Commissioner for Human Rights. Also preface by the High Commissioner to Business and Human Rights - A Progress Report, 1999.

[134] The issue of structural adjustment - today regarded as one of the essential ingredients of the processes of globalization - has concerned United Nations agencies for a long time. See, United Nations Economic Commission for Africa, African Alternative Framework to Structural Adjustment Programmes for Socio-economic Recovery and Transformation (AAF-SAP), E/ECA/CM.15/6/Rev.3 (1989).

[135] See, e.g., Deputy Secretary-General says fight against poverty emerging as one of greatest challenges of the times, press release, ECOSOC/5877 (28 October 1999), Economic and Social Council debates benefits and disadvantages of globalization of world economy, press release, ECOSOC/5704 (2 July 1997).

[136] By decision 1999/102 of the Sub-Commission.

[137] Resolution 1999/10 of the Sub-Commission.

[138] Statement by the Committee on Economic, Social and Cultural Rights on globalization and economic, social and cultural rights (May 1998).

[139] Statement of the United Nations Committee on Economic, Social and Cultural Rights to the Third Ministerial Conference of the World Trade Organization (Seattle, 30 November to 3 December 1999) (E/C.12/1999/9) (26 November 1999), para. 6.

[140] Ibid., para. 3.

[141] General Comment No. 12 (1999). The right to adequate food, Committee on Economic, Social and Cultural Rights, Report on the twentieth and twenty-first Sessions, Economic and Social Council Official Records 2000, supplement No. 2, annex V.

[142] Ibid., para. 20.

[143] Ibid., para. 41.

[144] See, e.g., concluding observations of the CEDAW on periodic reports of Argentina and Italy considered at its seventeenth session, Report of the Committee on the Elimination of Discrimination against Women (sixteenth and seventeenth sessions) Official Records of the General Assembly, fifty-second session, supplement No. 38 (A/52/38/Rev.1), paras. 295 and 345 respectively. See also, Committee on the Rights of the Child, Report on the twentieth session (CRC/C/84) (5 March 1999), paras. 211-213, which records a marginal statement made by a representative of the IMF at the session acknowledging the link between child rights and a stable macroeconomic environment.

[145] The same realization is what lies at the core of the Copenhagen Declaration and Programme of Action adopted at the World Summit for Social Development in 1995, op. cit. at note 127.

[146] United Nations Development Programme, Human Development Report, 1999, Oxford University Press, 1999, chapter 4.

[147] Ibid., chapter 5.

[148] See generally, Hugo Stoke, "From Norm to Action: Standard-setting and Technical Cooperation in the Field of Child Labour", in Human Rights in Development, 1998 and Michèle Jackson, "A New Convention to Eliminate the Economic Exploitation of Children", Tribune des droits humains, vol. 6, No. 3 (1999), p. 36.

[149] Michel Hansenne, "Globalization, Liberalization and Social Justice: Challenges for the International Community", public address by the former Director-General of ILO, accessed on 20 May 2000 at: http://www.ilo.org.

[150] UNCTAD has conducted numerous studies - some of them path breaking - that have raised serious questions about the so-called Washington Consensus. The organization is also recognized for having produced the most lucid examination of the Asian crisis and of offering a cogent response to it. See, for example, UNCTAD, Globalization and Liberalization: Effects of International Economic Relations on Poverty, (UNCTAD/ECDC/PA/4/Rev.1), 1996.

[151] See "UNCTAD X: Pies, preachers and poets", Focus on Trade, No. 46 (February 2000).

[152] See, Walden Bello, "UNCTAD X: An Opportunity Lost?", Focus on Trade, No. 46 (February 2000).

[153] See further Elena Mancusi-Materi, "Review of Development Approaches of UN Agencies", Development, vol. 42, No. 3 (1999), pp. 97-99.

[154] See "Good Intentions That Paved the Way to Arsenic Hell", Development and Cooperation, No. 6 of 1999, at p. 29.

[155] Statement by the Committee on Economic, Social and Culture Rights on Globalization, op. cit., at note 130, p. 2.

[156] See Joshua Karliner, "Co-opting the UN", The Ecologist, vol. 29, No. 5 (1999), at p. 318.

[157] Those problems are clear, for example, with the links (variously described as "dialogue" or "partnership") between the United Nations and the MLIs, such as the Bank and the Fund. A review of the last report of the meeting between the Bank and the United Nations demonstrates that human rights issues did not even feature on the agenda. See, "World Bank, United Nations Enhance Partnership", World Bank News Release, 15 March 2000.

[158] Vandana Shiva, op. cit., at note 6.

[159] Obviously, many others share the same view, including the United States Congress, former Bank and Fund employees like Joseph Stiglitz and Barber Conable and (since the Seattle and Washington protests) the media. See, the Report of the United States Congressional International Financial Institution Advisory Commission, Washington, D.C., February 2000, and Ron Scherer and Neil Irwin, "Blueprints for Redesigning the World Bank", Christian Science Monitor, 17 April 2000 (accessed on 15 May 2000 at: http://www.globalpolicy.org/socecon/bwi-wto/wbank/reform3.htm).

[160] David Slater, "The Spacialities of Democratization in Global Times", Development, vol. 41, No. 2 (June 1998), pp. 20-29, esp. p. 27.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Promoting the right to development in the context of the United Nations Decade for the Elimination of Poverty (1997-2006)

Report of the Secretary-General submitted in accordance with Sub-Commission resolution 1999/9

Introduction

1. In its resolution 1999/9 of 25 August 1999, the Sub-Commission on the Promotion and Protection of Human Rights recalling its resolution 1996/22 and decision 1998/105, in which it requested the Secretary-General to invite all relevant United Nations bodies and agencies to step up their action aimed at promoting international cooperation for the realization of the right to development in the context of the United Nations Decade for the Elimination of Poverty (1997-2006), and to provide him with information thereon, requested the Secretary-General to transmit annually to the Sub-Commission the information received.

2. The Commission on Human Rights, particularly in the context of various mandates on economic, social and cultural rights, has paid growing attention to the issue of poverty through the realization of the right to development. For example, both the independent expert on the right to development and the independent expert on human rights and extreme poverty have underlined the strong relationship between the realization of the right to development and

poverty eradication (see E/CN.4/1999/WG.18/2 and E/CN.4/2000/52). Further, in Commission resolution 2000/12 the Working Group on the Right to Development was invited to take into account the report of the independent expert on human rights and extreme poverty in its deliberations.

3. At the Special Dialogue on Poverty and the Enjoyment of Human Rights, held on 12 April 2000 during the fifth-sixth session of the Commission on Human Rights, the High Commissioner for Human Rights noted that a rights-based approach to development ensures that the human dimension is not lost in developing strategies to reduce poverty. Further, she stated that a rights-based approach to development is grass roots, all encompassing, preventive and supportive of States trying to combat poverty.

4. Development, poverty eradication and United Nations development cooperation have all been addressed by the Office of the High Commissioner for Human Rights in its work programme. The Office has placed the promotion of the right to development at the centre of its poverty-related strategies, plans, policies and operational activities. Promoting the right to development, furthering consensus on the requirements for its implementation, reducing the politicization that has surrounded it in international discourse, and working for its realization for all peoples are priority goals for the Office.

5. OHCHR has provided substantive and organizational support to the open-ended Working Group on the Right to Development, the independent expert on the right to development and also to the other development-related mandates of the Commission of Human Rights, including the independent expert on human rights and extreme poverty, the Special Rapporteur on foreign debt and the independent expert on structural adjustment and the Special Rapporteur on the right to education. Pursuant to newly established mandates in 2000, the Office will also support the Special Rapporteurs on adequate housing and on the right to food, as well as the newly appointed independent expert on the effects of structural adjustment policies and foreign debt in the full realization of all human rights.

6. OHCHR has organized regional seminars and workshops on the right to development most recently the inter-sessional Workshop on Economic, Social and Cultural Rights and the Right to Development in the Asia-Pacific region held in Sana'a in February 2000. OHCHR is currently preparing also the organization of an expert seminar to consider a possible declaration of human rights and extreme poverty (Commission resolution 2000/12).

7. Through the servicing of treaty-based bodies, OHCHR contributes to the realization of the right to development and the alleviation of poverty to supporting the human rights convenants and conventions and monitoring their implementation, including by providing support for the reporting process, the preparation of general comments, and constructive dialogues between States parties and the Committees on matters relating to poverty and development. In particular, the general comments and concluding observations adopted by the Committee on Economic, Social and Cultural Rights take increasingly into account the question of poverty eradication. Economic, social and cultural rights are recognized by the Committee as a key vehicle by which economically and socially mariginalized people, especially women and children, can lift themselves out of poverty and obtain the means to participate fully in their communities.

8. At the inter-agency level, OHCHR works to strengthen cooperation for development and poverty eradication within the United Nations system and facilitates the integration of the elements of the right to development into the programmes and policies of United Nations development agencies and programmes, inter alia the ongoing work of the United Nations Development Group (UNDG) - especially the recent UN Strategy for Halving Extreme Poverty by 2015 and its "Framework for Action", in which OHCHR participates actively; the United Nations Development Assistance Framework (UNDAF) and the Common Country Assessment (CCA); the World Bank comprehensive development framework (CDF) and poverty reduction strategy paper (PRSP) initiatives; and the high-level intergovernmental event on financing for development, to be convened by the Organization in 2001 in accordance with General Assembly resolution 54/196.

United Nations Development Programme

9. Substantive information received from UNDP is summarized as follows.

10. UNDP's activities focus on sustainable human development and poverty eradication as a contribution to the realization of the right to development. Following the Secretary-General's programme of reform, including the integration of human rights in all United Nations activities, UNDP took steps to define its role and support the promotion of the realization of human rights, in particular the right to development.

11. In 1998, UNDP published a policy document entitled "Integrating Human Rights with Sustainable Human Development, in which it was stressed that by working to eradicate poverty and by supporting the antipoverty capacity of Governments and civil society organizations, UNDP is fostering the implementation of the right to development.

12. A memorandum of understanding was signed by UNDP and OHCHR on 4 March 1998, which dedicates the first section of its operational annex to joint efforts for the promotion of the right to development. A number of activities are taking place to implement this commitment.

13. UNDP is providing substantive inputs and comments to the study of the independent expert on the right to development. UNDP is also following the discussions in the open-ended Working Group on the Right to Development.

14. UNDP is developing its in-house capacity in human rights and sustainable human development by training its staff. During 1999, four regional training workshops were organized jointly by OHCHR and UNDP for UNDP resident representatives/resident coordinators and respective government officials for the Asian-Pacific region (Sri Lanka), the west and central African region (Cote d'Ivoire), the east and southern African region (Namibia), and the eastern Europe and Commonwealth of Independent States region (Kazakhstan). In that regard, UNDP has contributed to the UNDG training module on human rights for UNDAF teams, which was developed in the Ad Hoc Group on the Right to Development. A comprehensive training manual on human rights for UNDP staff is being piloted through the experiences of the regional workshops.

15. In 1999 UNDP, in collaboration with the Arab Organization for Human Rights and OHCHR, held a seminar on human rights and development in Cairo. The seminar adopted an agenda for the realization of the right to development in the Arab States. UNDP is involved in the joint efforts to implement this agenda.

16. The joint UNDP/OHCHR Human Rights Strengthening programme (HRIST) is a global initiative to support selected UNDP country office pilot exercises integrating human rights, including the right to development, in the focus areas of UNDP development programmes.

17. In August 1999, UNDP published the Survey of UNDP Activities in Human Rights. The survey concludes that "as the UN's principal development arm, UNDP's primary objective is poverty eradication. Consequently, virtually all of its efforts in some way attempt to advance human dignity and promote equity though attacking the systemic root causes of poverty." In the last UNDP report on poverty (Overcoming Human Poverty, 2000), UNDP recognized that in several cases poverty eradication projects have called the attention of national decision-makers to human rights abuses, discrimination in employment, land tenure conflicts and the needs of indigenous groups. UNDP recognized also that in many areas, implementing the law would require capacity-building, institutional strengthening and technical advice. Thus, it has emphasized, for example, the training of community leaders to provide better local participation by civil society.

18. The forthcoming Human Development Report 2000 (29 June 2000) is dedicated to the question of human rights and human development. The report looks at human rights as an intrinsic part of development and development as a means to realizing human rights. The report calls for stronger international action to, inter alia, combat poverty not just as a development goal, but also as a central challenge for human rights.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Promoting the right to development in the context of the United Nations Decade for the Elimination of Poverty (1997-2006)

Report of the Secretary-General submitted in accordance with Sub-Commission resolution 1999/9

Addendum

1. Following the preparation report of the Secretary-General submitted in accordance with Sub-Commission resolution 1999/9, the United Nations Children's Fund (UNICEF) submitted a contribution dated 21 July 2000. The substantive information received from UNICEF is summarized below.

2. UNICEF has integrated human rights into its development and humanitarian mandates, both internally and in its cooperation with others, taking guidance from the Charter of the United Nations and international human rights standards as articulated in the major human rights treaties and declarations, such as the Declaration on the Right to Development and, above all, the Convention on the Rights of the Child. UNICEF has a special relationship with that Convention and is recognized as a major partner in its implementation process.

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3. A number of important human rights principles having particular relevance for the work of UNICEF are set out in the Declaration on the Right to Development, inter alia that: (i) the human person is the central subject of development, as active participant, contributor and beneficiary; (ii) the development process which every human person and all peoples are entitled to enjoy is one of economic, social, civil, cultural, and political development, through which all human rights and fundamental freedoms are realized; (iii) States have the primary responsibility, individually and through international cooperation, to create conditions favourable to the realization of the right to development.

4. As the 1996 Working Group on the Right to Development emphasized in 1996 in the report on its fifth session, the right to development involves more than development itself; it implies a human rights approach to development. For UNICEF, this approach is premised on the understanding that there is no dichotomy between human rights and development.

5. Many articles of the Convention on the Rights of the Child, as interpreted and applied by the Committee on the Rights of the Child, can serve as more detailed articulations of the Declaration's principles as they relate to children. Article 4 provides that States must take all appropriate measures to realize the rights guaranteed by the Convention. Regarding the economic, social and cultural rights contained in the Convention, States must undertake measures to the maximum extent of their available resources and where there is need. This effort should be supported by international cooperation. The Committee on the Rights of the Child has stated, on the basis of this article, that international assistance should aim at the promotion of children's rights. It has also frequently expressed concern about the impact of structural adjustment policies on countries dependent on international aid.

6. Article 3 provides that, in all actions concerning children, the best interests of the child shall be a primary consideration. The Committee has stressed that the best interests principle should be considered when States determine budget priorities, especially regarding the most vulnerable children, including girls, indigenous children and children living in poverty. Sufficient budgetary resources must be allocated to children, and the Committee has in some instances recommended that Governments review the impact of spending cuts and structural adjustment policies, to identify ways to ensure adequate protection for children.

7. Article 6 guarantees the child's right to life and provides that States must ensure children's survival and development to the maximum extent possible. The Committee views the right to survival and development as a holistic concept which engages all of the Convention rights, including the child's rights to the highest attainable standard of health (art. 24), to an adequate standard of living (art. 27), to benefit from social security (art. 26), to education (art. 28) and to leisure, recreation and culture (art. 31).

8. UNICEF's attention to the role of children in development responds both to the requirements of international human rights standards and to conditions for sustainable development. The worst effects of poverty are often experienced by children, who can sustain lifelong damage to their minds and bodies and whose full development is permanently frustrated. In a vicious cycle, impoverished children also become transmitters of poverty, as parents, to the next generation. Investment in children helps to lay a solid foundation for sustained and equitable economic growth in the future.

9. UNICEF acts at the national, regional and global levels to fulfil the right to development, guided by the principles of the Convention on the Rights of the Child and understanding the child as the central subject of development. The most disadvantaged children, including children living in poverty, are UNICEF's focal point.

10. UNICEF develops programmes of technical assistance to support the realization of children's rights, including programmes to: promote law reform; create national coordinating and monitoring mechanisms on children's rights; initiate information, education and training activities on children's rights; and enhance national capacity to collect and analyse data on children and on the enjoyment of their rights.

11. UNICEF supports the development of the United Nations Development Assistance Framework (UNDAF), in the context of the Secretary-General's Programme for Reform. UNICEF has promoted the importance and value of turning to the Convention on the Rights of the Child for guidance and direction in this initiative. UNICEF has also been involved in the Common Country Assessment (CCA) process, which reviews and analyses national development situations and identifies key issues, including internal and external risks to the development process, as a basis for advocacy, policy dialogue and preparation of the UNDAF.

12. UNICEF has also been involved in the identification of child rights indicators to assess trends, promote action and achieve progress in the enjoyment of human rights, and in the dissemination of these results. Several UNICEF regional and country offices are developing child rights databases and, as in Latin America and the Caribbean, are producing social indicator bulletins with partners which examine questions of equity, as well as overall access to basic services. Efforts to collect disaggregated baseline data have been undertaken in a large number of countries, including through national household surveys. The "TransMONEE" project, which monitors social conditions in economies in transition and is based at the International Child Development Centre, is a further example of disaggregated data analysis at the regional level. Multiple Cluster Indicator Surveys (MICS) to measure progress towards children and development goals are another key instrument to support the analysis of disparities, as well as overall national achievements, and to provide a basis for country programme strategies that address more directly the needs of especially disadvantaged children.

13. The 1995 Copenhagen Declaration recommended the 20/20 Initiative for interested donor and developing countries, as a means of providing the funding necessary for universal access to basic social services. This form of investment enhances social outcomes, helps reduce poverty and augments the capabilities of the poor. It is one of the most effective methods of addressing the worst manifestations of poverty, as well as generating the long-term conditions that foster social and economic development. In 1997, the United Nations Development Group recommended UNICEF as the lead United Nations agency to ensure follow-up to the Oslo Consensus on the 20/20 Initiative. UNICEF is strongly committed to the initiative and will continue to provide leadership within the United Nations system.

14. UNICEF also contributes to the dialogue on how best to maximize the interdependent objectives of human rights, economic growth and social development, paying particular attention to the plight of children in the world's heavily indebted poor nations. In the booklet Children in Jeopardy: the Challenge of Freeing Poor Nations from the Shackles of Debt, UNICEF assessed

the progress of the Heavily Indebted Poor Countries Initiative launched in 1996 to address the debt crisis, along with the major reforms to the Initiative suggested in June 1999 by the Group of Seven. The booklet also presents a joint UNICEF/Oxfam proposal to set the eradication of poverty at the heart of debt relief reform. UNICEF and Oxfam have argued that measures to ease the debt burden, and so improve the economic outlook for heavily indebted countries, cannot succeed unless they protect the spending on basic social services that ensures children's right to grow up into healthy, well-nourished, literate citizens, fully equipped to contribute in their turn to their nation's economic recovery. For this reason, the two organizations have proposed that far more weight needs to be attached to strengthening the capacity of Governments to absorb savings from debt relief into antipoverty plans and less weight to narrowly defined macro-economic targets. The booklet presents a framework for a new approach to eligibility for debt relief which considers a wider range of human development targets and involves a broader range of development partners, including United Nations agencies.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

Note by the secretariat

1. At its fifty-first session, the Sub-Commission, in its resolution 1999/11, took note of the working paper on the realization of the right to education, including education in human rights submitted by Mr. Mustapha Mehedi (E/CN.4/Sub.2/1999/10), decided to continue its consideration of that question and requested Mr. Mehedi to prepare, without financial obligations, a final paper on the subject and to submit it to the Sub-Commission at its fifty-second session.

2. The Commission on Human Rights, at its fifty-sixth session in 2000, elected new members and alternates of the Sub-Commission on the basis of nominations of experts made by States Members of the United Nations. Mr Mehedi was not nominated for re-election and, as a result, he ceased to be a member of the Sub-Commission.

3. As of mid-July 2000, no working paper has been submitted to the secretariat by Mr. Mehedi.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right of everyone to access to drinking water supply and sanitation services

Note by the Secretariat

1. In its decision 1999/107, the Sub-Commission on the Promotion and Protection of Human Rights - having taken note of Commission on Human Rights decision 1999/108 of 27 April 1999, in which the Commission noted that the issue of the right of individuals to drinking water supply and sanitation services remained undefined and therefore decided to request the Sub-Commission to give further consideration to that aspect in preparation for a study - requested Mr. El-Hadji Guissé to supplement his working paper (E/CN.4/Sub.2/1998/7), without financial implications, and to submit it to the Sub-Commission at its fifty-second session.

2. As the working paper prepared by Mr. Guissé pursuant to this request and submitted to the secretariat in May 2000 contained both new information and the text which the Sub-Commission already had before it in document E/CN.4/Sub.2/1998/7, the annex to the present document only contains the new information which supplements the working paper prepared by Mr. Guissé in 1998. This working paper (E/CN.4/Sub.2/1998/7) will, however, again be made available to the Sub-Commission as a background document of the fifty-second session.

Annex

Supplement to the working paper on the promotion of the realization of the right to drinking water supply and sanitation services prepared by Mr. El-Hadji Guissé pursuant to Sub-Commission decision 1999/107

1. The right to drinking water was established in 1999 in Belgian law, which states that everybody has the right of access to drinking water of sufficient quality and quantity for his nourishment, domestic needs and health. The right to drinking water is fully enjoyed by the vast majority of the population in industrialized countries, although there are problems for the most vulnerable. Europe has solemnly adopted the legal principle of access to drinking water for all under its Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Water Courses and International Lakes. Several of the signatories to the protocol, which was adopted in London in 1999, have established new rights, chiefly in favour of the most vulnerable.

2. A number of measures have been taken, including the right to maintenance of the water supply: in Flanders (Belgium), since 1997, every subscriber has had the right to a minimum uninterrupted supply of water for household use. Similar provisions have been adopted in France and Spain. In accordance with national legislation, the judiciary in certain countries has reaffirmed this right to maintenance of the water supply: the right to assistance in paying for water in the event of particular difficulties; the right to a level of charges that does not act as a deterrent to small consumers; the right to free supply; the right to a socially acceptable level of charges; the right to repair of leaking pipes; the right to be connected to the mains.

3. By a resolution on drinking water adopted on 28 April 2000, the Organization for Economic Cooperation and Development (OECD), recalling the Madeira Declaration of 17 April 1999 on the sustainable management of water resources, proposes that Governments and competent international bodies should explicitly recognize to all the right to water, in accordance with the following principles:

(a) Everyone has the right to water of sufficient quantity and quality for his life and health;

(b) Public authorities should adopt the necessary measures to promote access to water for all and should regulate the actions of the various public or private bodies involved in the management of water supplies;

(c) Within each community with responsibility for water supply, service costs should be shared in such a way that everyone can benefit from the right to water;

(d) In the course of their activities, economic actors and individuals should respect the right to water.

4. A full analysis of those aspects that form part of the rights recognized to every human being should provide a justification for this recommendation. The world already lacks water and, unless legal measures acceptable to all are put in place in order to ensure sound management of what is a common asset, real conflicts will break out between and within societies. The objective of this analysis is to define the right to drinking water, by establishing as closely as possible its relationship to other human rights. The rights mentioned above may be of help to the poor in obtaining access to drinking water in all countries.

5. With regard to the proposed timetable, it is recommended that a preliminary but substantive report should be submitted to the Sub-Commission at its fifty-third session, in 2001, based on the present working paper and taking into account the priorities set by the Sub-Commission. The report would then be the subject of a critical analysis and in-depth discussion by the Sub-Commission that would make it possible to identify the key issues to be considered in a progress report to be submitted to it at its fifty-fourth session, in 2002. The final report would be submitted to it at its fifty-fifth session, in 2003.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right of everyone to access to drinking water supply and sanitation services

Note by the Secretariat

Corrigendum

Annex, paragraph 3

For Organization for Economic Cooperation and Development (OECD) read European Council on Environmental Law.

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THE IMPLEMENTATION OF THE HUMAN RIGHTS OF WOMEN

TRADITIONAL PRACTICES AFFECTING THE HEALTH OF WOMEN AND THE GIRL CHILD

Fourth report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child, produced by Mrs. Halima Embarek Warzazi pursuant to Sub-Commission resolution 1999/13

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Introduction

1. In its resolution 1998/16, the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended that the mandate of the Special Rapporteur on traditional practices affecting the health of women and the girl child should be extended to ensure the completion of her task, as called for in resolution 1996/19, and at the same time to enable her to follow up recent developments at all levels, including the General Assembly. In its resolution 1999/13, the Sub-Commission decided to continue consideration of the question. This fourth report is thus submitted pursuant to the resolutions referred to above.

2. It may be recalled that in each of her previous reports (1996-1999), the Special Rapporteur deplored the small number of replies received from Governments, particularly those concerned by traditional practices affecting the health of women and the girl child, to the Secretary-General's note concerning the Plan of Action.

3. In 1996, she had noted that only 25 countries had replied. In 1997 Governments were even less forthcoming, with replies from only seven countries. In 1998, the Special Rapporteur received just four replies, confirming the statement in the conclusion to her report to the Sub-Commission at its forty-ninth session (E/CN.4/Sub.2/1997/10 and Add.1), that "the silence of many States concerned justifies unflinching mobilization both nationally and internationally".

4. In 1999, having received no reply at all, the Special Rapporteur decided to devote her third report to a brief survey of the subject and a non-exhaustive presentation of the action taken, nationally and internationally, to combat traditional practices affecting the health of women and the girl child, before summing up the current situation.

5. Despite the disappointment voiced in previous reports, the Special Reporter noted that mobilization within the societies affected by the phenomenon of harmful traditional practices was a force for positive, albeit slow and uneven change.

6. This year, the Special Rapporteur has received information from the following countries: Bolivia, France, Gambia, Germany, Mauritius, Mexico, Morocco, Nepal and Qatar. The Special Rapporteur would like to thank those countries - however few they may be - for the interest they have shown in the matter. Nevertheless, she continues to deplore this lack of information, which, she hopes, should not be interpreted as a lack of commitment to the elimination of harmful traditional practices. At the same time, on a less pessimistic note, the Special Rapporteur is pleased to report that Member States appear to be contributing more regularly and more systematically to the Secretary-General's report to the General Assembly (A/54/341), since this year no less than 22 States replied to the Secretary-General's request for information.

7. Originally, the Special Rapporteur had intended to devote the greater part of her report to practices other than female genital mutilation especially crimes of honour, which she felt required urgent, concerted action by the international community. In view of the very limited amount of information submitted directly on this question, however, she has decided to devote this report to a review of the latest information on national and international measures taken against female genital mutilation before considering some of the information available concerning other traditional practices.

I. FEMALE GENITAL MUTILATION: NATIONAL, REGIONAL AND INTERNATIONAL INITIATIVES

A. National initiatives

1. Information supplied by Governments

8. It is interesting to note that most of the Governments' replies refer only to female genital mutilation. Countries such as France and Germany have taken measures against female genital mutilation practised on their territory exclusively among immigrant communities. While recognizing that the figures it has regarding mutilations practised in the country are not reliable, Germany suggests 20,000 as a vague estimate of the number of cases.

9. Both those countries have launched information campaigns directed at the communities concerned in the hope of preventing the practices. In France, the Ministry of Employment and Solidarity subsidizes two associations, the Group for the Abolition of Sexual Mutilation (GAMS) and the Commission for the Abolition of Sexual Mutilation (CAMS). Both these associations are engaged in the task of prevention and supplying information to the communities concerned, as well as to health care staff and social workers.

10. In Germany, a brochure entitled "The Genital Mutilation of Women and Girls" was designed and distributed within the country, especially in guidance centres for foreign women and girls. The brochure is also used in schools. In addition, the Federal Ministry for Economic Cooperation and Development supports initiatives taken by the countries affected by the phenomenon and funds projects directed against the practices.

11. In both France and Germany, female genital mutilation is treated as an offence punishable under the relevant provisions of their penal codes. The perpetrators of such practices are therefore liable to criminal prosecution. German law does not recognize any alleviating circumstance, such as religious motives or the consent of the person concerned. Furthermore, liability extends not only to the person responsible for the mutilation but also to "instigators and accomplices". Clinicians and practitioners are also liable under the same criminal procedure. France considers that cases brought to court in recent years have created a greater awareness of the subject among doctors and social workers, while providing a channel for young girls to lodge complaints against those responsible for the practices.

12. The Special Rapporteur would like to draw attention to the statement she made jointly with the Commission on Human Rights Special Rapporteur on violence against women in connection with the trial of a French woman of Malian origin sentenced for performing excisions. The two rapporteurs considered that "such practices should not be condemned in the courts except as a last resort when education, information and the proposal of alternative rites that do not injure women and girls have not been successful. Training, information and education, especially in countries with high levels of immigration and appropriate physical and financial means, are the best means of combating harmful traditional practices effectively and freeing women and girls from obscurantism and violence".

13. While Mexico refers to its contribution to the Secretary-General's report to the fifty-fourth session of the General Assembly and to the fact that female genital mutilation is not practised in Mexico, Qatar refers to the information sent to the Special Rapporteur in 1998, contained in document E/CN.4/Sub.2/1998/11 (paras. 60-67). Qatar further reports that the practice of female genital mutilation has totally disappeared from the country.

14. In its reply to the Special Rapporteur, Gambia recognizes that some ethnic groups still practise female genital mutilation. However, more and more non-governmental organizations are active in the field informing and educating the communities concerned. Religious leaders are also joining in the debate to counter such practices. Meanwhile Morocco has informed the Special Rapporteur that the practice of female genital mutilation does not exist in the country.

2. Other sources of information

15. Among the data supplied by the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, the open condemnation of female genital mutilation practised by "excisionists" in Guinea, Burkina Faso, Nigeria, Mali and Senegal and those countries' public support for the eradication of those practices are to be welcomed.

16. In Nigeria, a law forbidding female genital mutilation in the State of Edo was passed by the State Assembly on 4 November 1999. In Uganda, the President of the Republic, Mr. Yoweri Museveni, launched an appeal to the population of the District of Kapchorwa, in Eastern Uganda, asking them to abandon the practice of female genital mutilation. On the occasion of "Culture Day", the President spoke to the elders and to religious and community leaders, asking them to use dialogue in order to eradicate the practice. In countries such as Tanzania, the national committee against traditional practices organized training and information seminars with some excisionists in order to make them aware of the risks and consequences of the operations.

17. The Special Rapporteur is pleased to report that legislative measures have been taken in countries such as Burkina Faso, Côte d'Ivoire, Djibouti, Egypt, Ghana, Guinea, Senegal, Tanzania and Togo. She would be very interested in this respect to be sent information concerning the impact of this legislation and the elimination of the practice.

18. The Special Rapporteur's attention has been drawn to the fact that among the aforementioned countries, some such as Burkina Faso have set out a programme of action over a specified period of time, while others have decided on priority lines of action to combat the practices. The key features of all these initiatives, which the countries have in common, remain training, information, education and awareness-building among the communities concerned, as well as among persons working with the communities.

19. It is interesting to note that the organizations working in the countries concerned by the phenomena are becoming increasingly aware of the importance and the usefulness of concerted action and the exchange of information and experience. They are now taking steps to set up communication and information networks. Such networks have the merit of lending weight and consistency to measures taken to combat traditional practices within the communities concerned and by those communities.

20. In addition and as a complement to national or transnational initiatives, regional activities are essential for an integrated approach to combating female genital mutilation.

B. Regional initiatives

21. While Africa has been one of the regions most affected by traditional practices in general, and female genital mutilation in particular, in recent years the continent has been remarkably active in combating the phenomenon. The Special Rapporteur would like to point out in this respect, without wishing to minimize the problem, that it is extremely difficult for a region affected amongst other ills by war, hunger, drought and economic recession to take action against practices which, for thousands of individuals, appear altogether familiar and natural. Despite these difficulties, the African continent has undertaken this lengthy endeavour strewn with pitfalls.

22. Lawyers and experts from 15 African countries took part in the second symposium for legislators organized by the Inter-African Committee in Addis Ababa from 23 to 25 November 1999. This symposium, which was a follow-up to a first meeting held from 10 to 12 September 1997, was opened by Mrs. Chantal Compaoré, first lady of Burkina Faso and goodwill ambassador of the Inter-African Committee.

23. At the second symposium, participants considered in depth the preliminary draft convention on the elimination of harmful traditional practices affecting the human rights of women and girls, together with the comments made by the Organization of African Unity (OAU) on the preliminary draft, which had already been revised at a preparatory meeting held in Addis Ababa from 18 to 22 November 1999. The Special Rapporteur was consulted by the Chairperson of the Inter-African Committee.

24. The preliminary draft convention does not deal only with female genital mutilation. It covers all practices affecting the human rights of women and girls, especially their physical integrity, their health and their psychological development. It is worth noting, however, that the idea of the convention originated in consideration of the issue of female genital mutilation and ways of combating the practice. The draft convention also provides for a follow-up mechanism, which would allow non-governmental organizations to contribute to the assessment of the situation and the progress achieved by countries, who would undertake to submit periodic reports to that body.

25. The preliminary draft convention, as revised, will be submitted for adoption to the forthcoming OAU ministerial conference, which has decided to consider it within the framework of the draft African charter on women's rights currently in preparation. The aim would be to incorporate the preliminary draft convention as one of the chapters of the future charter.

26. The Special Rapporteur is monitoring the situation carefully and considers that the adoption of a binding legal instrument would encourage countries to review their national legislation and would facilitate enforcement.

27. At the Sixth African Regional Conference on Women, which was held in Addis Ababa from 22 to 26 November 1999 to consider the implementation of the Beijing Declaration and

Platform for Action, one of the major preoccupations was the question of improving the living conditions of women and girls, so that one of the subjects discussed was traditional practices harmful to the health of women and girls, with special emphasis on female genital mutilation. A review of the "critical areas of concern" of the Beijing Platform for Action showed that much still remained to be done, despite some noteworthy improvements in the areas of health, education and certain basic rights. It emerged clearly from the debates that women remained the foremost and most vulnerable victims of poverty, illiteracy, discriminatory laws, violence in the home, at work and in the streets and escalating ethnic conflicts.

28. The special session of the General Assembly (in June 2000) to evaluate the implementation of the Peking platform since its adoption provided an opportunity to review progress and obstacles in various areas, especially traditional practices.

29. In her report to the fifty-first session of the Sub-Commission (E/CN.4/Sub.2/1999/14), the Special Rapporteur had "called on all countries with large inflows of immigrants to develop and put into effect programmes to combat harmful traditional practices in accordance with their national laws and international standards, but always with due respect for the cultural values of the migrant population groups and without denigrating their cultures or treating the societies concerned with disdain or an air of superiority" (para. 79).

30. In the spirit of that appeal, a few initiatives are beginning to appear among European countries. The Special Rapporteur's attention was drawn in particular to initiatives taken in the United Kingdom and Belgium.

31. In 1998, the International Centre for Reproductive Health in Ghent (Belgium) carried out a study on female genital mutilation in Europe. The study was jointly funded by the European Commission (DAPHNE), the Royal Tropical Institute of Amsterdam and Defence for Children International (Netherlands). The study provided the European Commission with information concerning the medical and sociocultural aspects of female genital mutilation. It also reviewed existing European legislation on the subject.

32. In November 1998, 50 experts from Europe and Africa met in Ghent to develop strategies to eradicate the practice. The meeting's recommendations were subsequently submitted to the European Commission. It also provided an opportunity for organizations and individuals engaged in combating female genital mutilation to make contact with each other. The non-governmental organizations and field organizations emphasized the importance of setting up a network of organizations that shared the same concern.

33. After the study and the meeting of experts, the Ghent Centre was mandated to prepare a project to last initially for one year, from December 1999 to December 2000, with the possibility of a subsequent extension. The first phase of the project consists in drawing up an inventory of current programmes directly or indirectly related to the practice of female genital mutilation in Europe. Following up the meeting of experts and the new contacts between organizations, the second phase of the project is intended to set up a network on a European scale to combat the practice of female genital mutilation by African communities in Europe. This network would provide an opportunity to exchange information and examples of successful measures taken against female genital mutilation in communities, to harmonize handbooks and other forms of

training health-care professionals in the subject; and finally to coordinate research efforts in Europe. The general objective appears to be to combat and eradicate female genital mutilation in Europe through a common, concerted approach covering all aspects of the phenomenon on a European scale.

34. As part of the project, for which five workshops are planned for academics, health-care professionals and field organizations, the first workshop was held in Göteborg (Sweden) from 26 to 28 April 2000. This first workshop, entitled "Exchanging experiences and information at community level", was the occasion for an exchange of information on experiences and model programmes already implemented with success to combat the practice. The Special Rapporteur will receive a copy of the workshop's report as soon as it is published.

35. In the United Kingdom, the "UK All-Party Parliamentary Group on Population, Development and Reproductive Health" organized a parliamentary hearing of witnesses on the subject of female genital mutilation on 23 and 24 May 2000. The hearing provided an opportunity to emphasize the importance of issues such as awareness-creation, training and information, and the effectiveness of legislation concerning female genital mutilation in the United Kingdom and abroad. The "witnesses" represented Belgium, France, Senegal, Sierra Leone, Sudan and the United States, as well as the United Nations Population Fund (UNFPA) and the Wallace Global Fund. The Ghent International Centre and the Inter-African Committee also took part.

36. In her address, the chairwoman of the parliamentary group reported that some 130 million women and girls had undergone genital mutilation and that 2 million girl children were estimated to be at risk each year. While the bulk of those numbers concerned Africa, Asia and the Middle East, Europe was also affected by the practice. Female genital mutilation constituted a violation of human rights and it was vital that the practice be stopped. While legislation was necessary, its effective enforcement remained essential.

37. The Special Rapporteur welcomes these signs of interest. It is indeed valuable to tackle the phenomenon on a European scale in order to achieve more effective and better coordinated action. While the Special Rapporteur systematically encourages all projects, measures and initiatives aimed at informing, training and educating, she considers that due emphasis should be placed on the importance of the cultural and social heritage of the groups in which these practices occur. Policies should therefore give consideration to this cultural aspect and emphasize the fact that cultural practices can be changed without detracting from the cultural values of societies as such.

C. International initiatives

1. Measures taken within the United Nations system

(a) General Assembly

38. The Special Rapporteur would like to recall that the special session of the General Assembly for the review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development (30 June-2 July 1999)

identified key actions for more effective implementation of the Programme of Action. Governments were recommended in particular to "promote and protect the human rights of the girl child and young women, which include economic and social rights as well as freedom from coercion, discrimination and violence, including harmful practices and sexual exploitation" (A/S-21/5/Add.1, para. 42).

39. It also recommended that Governments train health-care providers to assist persons who had been subjected to genital mutilation, and to promote men's understanding of their roles and responsibilities with regard to promoting the elimination of harmful practices, such as female genital mutilation.

40. During the fifty-fourth session of the General Assembly, in the course of an interview with the main joint author of the resolution on traditional practices, the Special Rapporteur recalled the importance of not restricting consideration to female genital mutilation only. There are many traditional practices that affect the health of women and young girls and although sexual mutilation is one of the best known manifestations, it is far from being the worst.

(b) Treaty mechanisms

41. At its twentieth session in 1999, the Committee on the Elimination of Discrimination against Women adopted general recommendation 24 on article 12 of the "Women and health" Convention. General recommendation 24 emphasized that some cultural or traditional practices such as female genital mutilation carried a high risk of disability and even death for the women and girls subjected to them. States should therefore ensure the enactment and effective enforcement of laws that prohibited female genital mutilation and the marriage of girl children.

42. It was satisfying to note that, for the last few years, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child and the Human Rights Committee had regularly considered the issue of harmful traditional and customary practices in their review of States parties' reports.

43. At its twenty-first session, the Committee on the Rights of the Child expressed its concern at the persistent practice of female genital mutilation in Benin, Chad, Guinea and Yemen.

44. At its sixty-fifth session, in its concluding comments on the initial report of Lesotho, the Human Rights Committee expressed concern about the practice of female genital mutilation which continued to exist in parts of the country. At the same session, the Committee welcomed the recent changes in Tanzanian law which criminalized female genital mutilation.

45. The recommendations of these treaty bodies with regard to the elimination of harmful traditional and customary practices include the implementation of punitive measures, coordination with civil society, awareness-raising and information campaigns, and education programmes.

2. Measures taken by other United Nations bodies

46. As part of its activities devoted to combating violence against women, the United Nations Development Fund for Women (UNIFEM) considered the question of traditional practices affecting the health and well-being of women and girls. UNIFEM's action has included providing financial assistance to projects aimed at eliminating violence against women through a trust fund, and setting up a working group "End violence", in which non-governmental organizations exchange information and examples of positive measures to end violence against women, which can lead to national and transnational changes.

47. During 1998, as part of its strategy for combating traditional practices, the World Health Organization published a global study entitled "Female genital mutilation: an overview" to assist Governments working to eliminate the practice. WHO also continued to support its regional plan of action to speed up the elimination of female genital mutilation in Africa, specifying objectives to be attained by each country.

48. UNICEF has identified female genital mutilation as one of its programme priorities for 1998-2000 in countries where the practice is prevalent. Its efforts have continued to focus on synthesis and analysis of experience acquired in the field and the production of materials for education and behavioural change. Indicators have been developed, together with methods of evaluating regional and national initiatives. UNICEF plans to review global experience in this regard in collaboration with WHO and UNFPA.

D. Other information

49. Before closing this section dealing with female genital mutilation, which gives a brief review of some of the most recent initiatives in this area, the Special Rapporteur would like to mention two interesting features: firstly, the keenness of young people to combat harmful traditional practices, and secondly, the mail she has received concerning male circumcision.

50. The Special Rapporteur has welcomed the many petitions sent in by schoolchildren and students from various countries condemning female genital mutilation. This awareness and mobilization on the part of young people is an encouraging sign that the practice may eventually be eradicated. Since all the petitions were sent in by European or North American institutions, however, she would like to appeal to the teaching staff concerned to ensure their students are given clear, objective information in order to avoid religious overtones or the demonization of certain cultures.

51. The Special Rapporteur also wishes to report that a "Youth Forum", organized by the Inter-African Committee, was held in Addis Ababa from 25 to 27 April 2000. More than 60 young people from 16 African countries were joined there by representatives of United Nations organizations such as WHO, UNFPA and UNICEF and other special guests. Young people, who account for 40 per cent of the population of Africa, have an important role to play in the eradication of harmful traditional practices.

52. These extremely motivated young people discussed various harmful traditional practices such as female genital mutilation, early marriages and nutritional taboos and they undertook to do everything they could to eradicate them. They decided to set up a youth network in Africa, which would be responsible amongst others for implementing the plan of action adopted by the young people during the forum. This plan of action outlines strategies for eradicating harmful practices through information, education, dialogue, and creating awareness in communities, especially among religious leaders and notables. The young people said they were convinced that their joint efforts and their cross-border links would greatly help to change people's attitudes.

53. The Special Rapporteur welcomes this initiative, which, she hopes, will be followed by other young people, either by joining the existing network or by creating other similar networks. She also hopes the networks will extend beyond the African continent.

54. For the sake of transparency, the Special Rapporteur would like to mention the fact that she has received a few letters condemning male circumcision. In order to close once and for all an acrimonious debate, which has led to personal attacks against herself, she would like to recall that her mandate by the Sub-Commission on the Promotion and Protection of Human Rights concerns traditional practices affecting the health of women and the girl child. The same mandate applies with regard to the General Assembly or other United Nations bodies. By restricting herself to female circumcision, the Special Rapporteur is therefore only keeping to her terms of reference. Furthermore, she considers that the harmful effects of male circumcision cannot in any way be compared or equated with the violence, danger and risk faced by girl children and women.

55. To close this aside, the Special Rapporteur might draw attention to a study published at the beginning of the year by the University of Washington (Seattle), which concludes that the great majority of boys suffer no complications as a result of circumcision. What is more, the Sunday Times (United Kingdom) of 26 March 2000 published a scientific study carried out by specialists of Melbourne University in Australia, according to which male circumcision may be related to a lower risk of HIV transmission from women to men.

II. OTHER TRADITIONAL PRACTICES

56. As mentioned earlier in this report, the Special Rapporteur originally intended to devote a large part of the report to traditional practices other than female genital mutilation. For instance, she was particularly horrified by reports in the media concerning crimes of honour. Moreover, while the practice of female genital mutilation is arousing opposition in the public awareness, and in particular among the communities concerned, other practices, which are just as harmful and widespread, are still maintained and sometimes even reappear in different guises, becoming more insidious.

57. The section below gives information submitted by States concerning practices other than sexual mutilation as well as all further information received by the Rapporteur on the subject.

A. Information supplied by Governments

58. In its communication, Qatar mentions that, while progress has been made in combating practices such as cure by fire, traditional healing and early marriages, there is no doubt that some of these practices still exist. Nevertheless, Qatar recalls that traditional healing and charlatanism are prohibited by law. Qatar is convinced that with more information and education attitudes will evolve and traditional practices will disappear.

59. Nepal reports that progress has been achieved in recent years thanks to new legislation and changes to end practices such as early marriage and neglect of girls and expectant women.

60. Despite the introduction of appropriate legislation and procedures, Morocco, Mauritius and Bolivia all three admit that certain practices still persist in some situations. Morocco recognizes that some practices, such as self-medication, the use of traditional medicines and traditional healing are still practised in rural areas. The Government had drafted a national plan of action to make women part of the development drive. The four priority areas singled out by the plan include reproductive health, essentially in rural areas, and a plan to inform the population, and particularly men in that regard.

61. Female genital mutilation and female infanticide are not a problem in Mauritius. On the other hand, early marriages and childbearing, as well as the risk of anaemia among girls, still exist. Apart from taking the required legislative measures, the Government has concentrated on information and education concerning reproductive health, information about food and prevention of HIV transmission.

62. Bolivia notes that despite some progress in social and cultural matters, some traditional practices affecting women and girls still persist, especially in the Andean communities. Such practices vary from one community to another, but they all in some way or other concern reproductive health, especially early childbearing and related risks. Since there is an obvious, well established link between educational standards and early childbearing, the public authorities have been concentrating their efforts on more widespread and systematic education. These efforts are backed by legislative measures, especially in the area of public health, for the protection and promotion of the rights of women and girls to their physical integrity and to ensure easier access to better health services.

B. Measures taken within the United Nations system

63. The special session of the General Assembly for the review and appraisal of the implementation of the Cairo Programme of Action of the International Conference on Population and Development recommended, inter alia, that Governments review all legislation with a view to amending and revoking that which discriminates against girl children and young women and take firm measures to eliminate harmful and discriminatory attitudes, including son preference, prenatal sex selection and all forms of violence against women and small girls, such as rape, incest, sexual exploitation and trafficking (A/S-21/5/Add.1, para. 48).

64. The question of female infanticide was mentioned in resolution 2000/85 adopted by the Commission on Human Rights at its fifty-sixth session.

65. At its twentieth session, in 1999, the Committee on the Elimination of Discrimination against Women expressed concern at the growing disparity in the male/female sex ratio at birth in China and its relationship to the country's discriminatory tradition of son preference. At its twenty-first session, in its concluding comments on the initial report by Nepal, the Committee expressed concern that certain practices, such as child marriage, polygamy, deuki (a tradition of dedicating girls to a god or goddess and making them "temple prostitutes"), badi (the ethnic practice of forcing young girls to become prostitutes) and other discriminatory practices that derive from the caste system, were still prevalent in the country. The practice of deuki, it may be noted, has been forbidden by the Children's Act in Nepal.

66. The Committee requested the Democratic Republic of the Congo to issue legislation forbidding traditional practices such as dowry, levirate, polygamy and forced marriage.

67. The representative of India was recommended to support the prohibition of practices such as dowry, devadasi (temple prostitution) and discrimination based on castes. The Committee supported recommendations by the National Commission of Women in India concerning the law on rape and domestic violence, which was due for reform. The Committee also asks the Government to establish a compulsory universal system of registration of marriages and births as a means of protecting women and girls.

68. The Committee on the Rights of the Child expressed its concern at its twenty-first session concerning early and forced marriages in Benin.

C. Other information

69. According to an article published in the daily Chark el Aoussat on 21 February 2000, the crime of honour, which is an ancient practice that prevails in some parts of the Middle East, gives a man the right to kill any woman in his family suspected of behaviour prejudicial to the family's honour. This practice was also common in the past in countries of the Mediterranean Basin, particularly in very traditional, remote areas of Greece and Italy. In those very poor areas, the practice was based chiefly on one criterion: birth control.

70. In the Middle East and in Egypt, crimes of honour go against the principles of Islam, since the normal penalty for dishonour affecting a woman is marriage. Moreover, drastic conditions are required to determine a guilty relationship between a man and a woman. This must be proved by evidence given by four persons who witnessed the sexual act. Yet according to the practice as understood in the above-mentioned countries, the crime of honour is decided on the basis of mere suspicion and rumour.

71. The history of the last century appears to indicate that when the British occupied certain Arab countries, they came up against this popular practice. Instead of combating it, however, they preferred to add it to the Penal Code they were introducing, thus confirming the legality of discriminatory behaviour directed against women only, whereas the men responsible for such acts are invariably let off the punishment they deserve.

72. It is worth pointing out that crimes of honour may well hide motivations which have nothing to do with the dishonour inflicted on the family of the woman who has been killed: the cause of the crime may lie simply in jealousy or a question of inheritance.

73. In Jordan, where crimes of honour lead to over 20 deaths a year, a campaign against the practice, followed up in February 2000 by a major demonstration led by the Jordanian princes, has urged Parliament to abolish article 340 of the Penal Code, which by its lenient attitude encourages crimes of honour. The abolition proposal put forward by the Jordanian Government was unfortunately rejected by the Parliament, whose retrograde members justify their opposition by arguing that abolishing the practice would lead to debauchery and loose morals.

74. Crimes of honour are also commonplace in Pakistan, where human rights groups have condemned such practices. A demonstration was held in August 1999 after the murder of a young woman, Samia Imran, who was killed in the office of the lawyer to whom she had turned for help. She was murdered because she had refused a marriage arranged by her family. Although the Senate was to have adopted a resolution condemning such acts, some Senators withdrew their support and refused to consider the resolution (source: Financial Times, 5 August 1999).

75. Although it is extremely difficult to obtain statistics concerning the prevalence of "crimes of honour", since they are only rarely prosecuted, the Pakistani Human Rights Commission estimates that in Punjab, in 1998 and 1999, more than 850 women were murdered by their husband, brother, father or other relative. These women were all suspected of immoral behaviour (sources: The Guardian Weekly, 25 May 2000, Chark el Aoussat, June 2000).

76. Among the many forms of domestic violence affecting women in Pakistan, there is the practice of burning. Again according to the Pakistani Human Rights Commission, in Punjab in 1998-1999, 560 cases of burning were recorded, in which half the victims died as a result of their burns. The Progressive Women's Association, which assists and supports the victims of this type of violence, say they have come across over 3,560 women who were treated in hospital between 1994 and 1999 for attacks by fire, acid or petrol.

77. The Special Rapporteur would like to refer in this respect to the report submitted by the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2000/3), which contains a section on the problem (chapter V, section C). According to information she had received, the Special Rapporteur noted that "honour killings take many forms. In some cases, young girls and women have been forced to commit suicide after public denunciation of their behaviour and open threats to their lives. Others are disfigured by acid burns; many of these women die as a result of their injuries [...] Only a handful of the perpetrators are arrested, and most of these criminals receive only token punishment [...] In almost 90 per cent of such cases, the victims are killed by their own family or at their behest" (para. 79).

III. CONCLUSION

78. The Special Rapporteur welcomes the positive developments that have occurred in the struggle against some traditional practices, such as female genital mutilation, son preference - thanks to efforts to eliminate discrimination against girls - practices related to pregnancy, early marriage and the traditional and extremely resistant phenomenon of violence in the family, in internal and external conflicts and in women's daily lives.

79. With regard to female genital mutilation, substantial progress has been achieved since the Sub-Commission in 1983 adopted resolution 1983/1 taking on a problem then considered taboo. This taboo has now been shattered and it is with extreme satisfaction that the Special Rapporteur notes the growing commitment of civil society in countries affected by harmful traditional practices, especially female genital mutilation.

80. She welcomes the many initiatives taken in the communities concerned, with the support of government authorities firmly decided to end harmful traditional practices, often encouraged by international material and technical assistance and in particular by Governments and United Nations organizations such as WHO, UNICEF and UNFPA.

81. There is no doubt that the alarm sounded in 1975 by the non-governmental organization Terre des hommes and the awareness campaign launched in 1983 considerably helped to change attitudes, a precondition of success in eliminating harmful traditional practices.

82. The Special Rapporteur wishes to pay tribute in particular to non-governmental organizations for their devoted efforts to combat such practices and for the help they have given her in carrying out her mission. Special mention should be made of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children. NGOs have also been doing a remarkable job of consciousness-raising, information, training and providing material and financial assistance, thus making a substantial contribution to the campaign against these practices.

83. Nevertheless, despite the slow but steady progress observed in the campaign against female genital mutilation, the Special Rapporteur would like to draw the attention of the international community as a whole, at both governmental and non-governmental level, to the fact that many harmful traditional practices, discriminatory attitudes and acts of violence exist and are not being dealt with as they should be. Yet they affect exclusively women and girls. The case of the crime of honour is a perfect illustration of this. Efforts and vigilance must therefore not be relaxed, especially as there is a need to combat not just laws, but beliefs rooted in centuries of patriarchal authority and male domination, drawing strength from discrimination against women, ignorance and indifference towards women's fate.

84. The Special Rapporteur remains convinced that education for both men and women, information, dialogue and perseverance will in the end overcome all resistance and all these harmful practices perpetuated in the name of religion, tradition and custom.